

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



UNITED STATES COURT OF  
APPEALS  
FOR THE SECOND CIRCUIT

Docket No. 75-1274

UNITED STATES OF AMERICA,  
Plaintiff-Appellee

v.

EDUARDO MONTIELL,  
Defendant, Appellant

APPENDIX FOR THE DEFENDANT-APPELLANT

MURRAY CUTLER  
16 Court Street  
Brooklyn, New York

Attorney for Defendant-Appellant

PAGINATION AS IN ORIGINAL COPY

Docket No. 75-1274

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

EDUARDO MONTIELL,

Defendant-Appellant.

-----x

APPENDIX FOR THE DEFENDANT-APPELLANT

MURRAY CUTLER  
16 Court Street  
Brooklyn, New York 11201

Attorney for Defendant-  
Appellant

TABLE OF CONTENTS

INDICTMENT	.....	A
DOCKET ENTRIES	.....	B
HEARING OF MOTION TO SUPPRESS (excluding testimony of defendant)	.....	1 to 131
OPINION DENYING MOTION TO SUPPRESS	.....	123
MISCELLANEOUS TRIAL TESTIMONY	.....	132 to 138
CHARGE OF THE COURT	.....	147

75CR 81

# ARTELS

B

TITLE OF CASE		ATTORNEYS
THE UNITED STATES	<b>CLOSED</b>	For U. S.: CORCORAN
EDUARDO MONTIELL		
		For Defendant:
Did distribute cocaine		

[illegible]

date	PROCEEDINGS
1/30/75	Before DOOLING, J. - Indictment filed
2/24/75	Magistrate's file 74 M 1375 inserted into CR file.
3-13-75	Before BARTELS J - case called - deft & counsel Murray Cutler present - deft enters a plea of not guilty - trial set down for May 5, 1975. Bail: O.R.
4-3-75	Notice of Readiness for Trial filed
5-6-75	Before BARTELS J - case called - deft & counsel Murray Cutler present - trial ordered and BEGUN - hearing ordered and begun on defts motion to suppress - hearing concluded - defts motion denied - Jurors selected and sworn - trial contd to 5-7-75.
5-7-75	Before BARTELS J - case called - deft & counsel M. Cutler present - trial resumed - Trial contd to May 8, 1975 @ 10:45 AM.

RED:ci  
743,260

A

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

EDUARDO MONTIELL,

Defendant.

INDICTMENT

Cr. No. 75-2281  
(Title 21, U.S.C.,  
§841(a)(1))

1-30-75

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 20th day of September, 1974, within the Eastern District of New York, the defendant EDUARDO MONTIELL did knowingly and intentionally possess with the intent to distribute approximately fourteen (14) ounces of cocaine, a Schedule II narcotic drug controlled substance, in violation of the laws of the United States. (Title 21, United States Code, Section 841(a)(1)).

COUNT TWO

On or about and between the 19th day of September, 1974 and the 20th day of September, 1974, both dates being approximate and inclusive, within the Eastern District of New York, the defendant EDUARDO MONTIELL, together with one known as JOHN DOE ALVARO, named herein as a co-conspirator but not as a defendant, wilfully, knowingly and unlawfully did combine, conspire, confederate and agree to commit an offense in violation of Title 21, United States Code, Section 841(a)(1), in that they did conspire to distribute quantities of cocaine, a Schedule II narcotic drug controlled substance in violation of the laws of the United States.

OVERT ACTS

In furtherance of said conspiracy and to effect the objective thereof, the defendant EDUARDO MONTIELL committed the following overt acts, among others, within the Eastern District of New York:

1. On September 19, 1974, the defendant EDUARDO MONTIELL met with undercover agent Angelo Carrion at 41-53 68th Street, Woodside, New York.

2. On September 20, 1974, the defendant EDUARDO MONTIELL met with undercover agent Angelo Carrion at 41-53 68th Street, Woodside, New York. (Title 21, United States Code, Section 846).

A TRUE BILL.

\_\_\_\_\_  
FOREMAN

\_\_\_\_\_  
DAVID G. TRAGER  
United States Attorney  
Eastern District of New York

75CR 81

PROCEEDINGS

DATE	PROCEEDINGS
5/7/75	Before BARTELS, J. - Case called- Deft and counsel present-Trial resumed Judge charges jury-jury retires to deliberate-order of sustenance signed jury returns and renders a verdict of <del>XXXXXX</del> guilty as to counts 1 and 2 jury excused-deft's motion to set aside verdict- denied-trial concluded sentence adjd without date-deft's bail set at \$15,000 P.R. Bond-court grant leav to make bail application in 30 days
5/8/75	By BARTELS, J.- Order of sustenance filed
7/11/75	Before BARTELS, J.- Case called- Deft and counsel present- Deft sentenced on counts 1 and 2 to a period of 5 years and a special parole term of 5 years to run concurrently on each count- subject to T-18, U.S.C. Sec. 4208(a)(2)- Deft to surrender on 8/11/75 Bail of \$10,000.00 P.R.B. cor
7/11/75	Judgment and Commitment filed- certified copies to Marshal
7-15-75	Notice of Appeal filed.
7-15-75	Docket entries and duplicate of Notice of Appeal mailed to C of A
7-17-75	Stenographers transcript filed dated May 6, 1975
7-17-75	Govts Requests to Charge filed.

A TRUE COPY ATTEST  
7/16/75  
LEWIS ORNEL CLERK  
BY *[Signature]* DEPUTY CLERK

1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK

4 -----X

5 UNITED STATES OF AMERICA, :

6 -against- :

75-CR-81

7 EDUARDO MONTIELL, :

8 Defendant. :

9 -----X

10 United States Courthouse  
11 Brooklyn, New York  
12 May 6, 1975  
13 10:30 o'clock A.M.

14 B e f o r e :

15 HONORABLE JOHN R. BARTELS, U.S.D.J.  
16  
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18  
19  
20  
21

22 MICHAEL PICOZZI  
23 OFFICIAL COURT REPORTER  
24  
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Appearances:

DAVID G. TRAGER, ESQ.  
United States Attorney  
for the Eastern District of New York

DAVID GOULD, ESQ.  
Assistant U.S. Attorney

MURRAY CUTLER, ESQ.  
Attorney for Defendant

1  
2 A N G E L O C A R R I O N , called as a witness,  
3 having been first duly sworn, took the stand and  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GOULD:

7 Q Mr. Carrion, what is your age?

8 A 38.

9 Q What is your profession?

10 A Police Officer.

11 Q Who do you work for?

12 A Suffolk County Police Department.

13 Q And how long have you worked for the Suffolk  
14 County Police Department?

15 A Approximately eleven and a half years.

16 Q Did you have any special assignment with the  
17 Suffolk County Police Department?

18 A Narcotic undercover agent.

19 Q Did you work with any particular group?

20 A Long Island Drug Enforcement.

21 THE COURT: Wait a minute, wait a minute.

22 Narcotic what is it? Narcotics?

23 THE WITNESS: Undercover agent.

24 THE COURT: And you work for what group?

25 THE WITNESS: Long Island Drug Enforcement Task

Force.

THE COURT: All right.

Q Now, Mr. Carrion, focusing your attention on September 20, 1974, how were you then employed?

A As an undercover agent.

Q With the same group you just mentioned?

A Yes, sir, I was.

Q And did you have the occasion on that date to go to the apartment of one Eduardo Montiel?

A Yes, sir, I did.

THE COURT: Wait a minute. All right.

Q Do you see Mr. Martiell here today?

A Yes, sir.

Q Excuse me, -- withdrawn.

Did you meet with Mr. Martiell that day?

A Yes, sir, I did.

Q Do you see Mr. Martiell here today?

A Yes, I do.

Q Would you point him out now, please?

A Seated at the defense table, sports jacket, blue shirt and moustache.

MR. GOULD: Your Honor --

THE COURT: What you're doing is leading him to such an extent that he can't tell his story.

Now, go ahead. Ask him.

MR. GOULD: Well, your Honor, this is merely background.

Q Mr. Carrion, could you tell us briefly what happened on that day?

A At approximately 11:30 in the afternoon I received a telephone call from Mr. Martiell and we set up making arrangements for me to go to his house to purchase a pound of cocaine.

MR. CUTLER: Objection, your Honor.

THE COURT: Why?

MR. CUTLER: Because he's not testifying to any conversations.

THE COURT: Bring that out on your cross. He made arrangements. I would think Mr. Carrion, that is a conclusion. Just state it. What do you mean by made arrangements? You got a phone call from the defendant Martiell?

THE WITNESS: Yes.

THE COURT: What did he say to you and what did you say to him?

MR. GOULD: Your Honor, for the purpose of this suppression hearing I thought we could expedite matters. The important facts will be what happened

1  
2 in the apartment --

3 THE COURT: No. Just do it the regular way.

4 MR. GOULD: I was going to suggest since your  
5 Honor said that you are going to have a hearing on the  
6 question as to the voice identification that it would  
7 be essential at this point to have the basic under-  
8 standing as to whether he really knows who he spoke to  
9 on the telephone. This is the crux of their entire  
10 procedure. It started with the telephone call.

11 THE COURT: Wait a minute. Let's -- Mr. Cutler --  
12 if you are going to stop all during the trial with all  
13 of this business I am going to cut all of it very short.  
14 We are going to get right down to the facts. You keep  
15 that in mind, too, Mr. Gould.

16 MR. GOULD: Yes, your Honor.

17 THE COURT: What did you say to him and what did  
18 he say to you? You got a call from him, right?

19 THE WITNESS: Yes, sir.

20 THE COURT: How did you know it was he?

21 THE WITNESS: I recognized his voice, sir.

22 THE COURT: You recognized his voice right then  
23 and there? Had you ever heard it before?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. And you got a call from him.

1  
2 THE WITNESS: Yes, sir.

3 THE COURT: What did he say?

4 THE WITNESS: He said if I was interested in taking  
5 a pound. And --

6 Q What did you think the "he" meant by a pound?

7 THE COURT: Well, taking a pound. All right.

8 A I asked him the price and he said between thirteen  
9 and fourteen.

10 THE COURT: Thirteen and fourteen? What does  
11 that mean; do you know?

12 THE WITNESS: Thousand dollars.

13 THE COURT: Thirteen thousand, thirteen thousand  
14 dollars?

15 THE WITNESS: Between thirteen and fourteen  
16 thousand dollars.

17 THE COURT: For what?

18 THE WITNESS: Cocaine.

19 THE COURT: All right, very well.

20 Next.

21 A He wanted to know if I could go there right away.  
22 I told him no. That I had some business to take care of  
23 such as making a payroll for the carpenters.

24 THE COURT: Yes. Well, anyway, I guess now  
25 we're going into too much detail. We can stop.

1  
2 Q Did there come a time that day when you did go  
3 to the apartment?

4 A Yes, sir.

5 THE COURT: Well, what happened?

6 Did you then make some, give him some idea when  
7 you could come?

8 THE WITNESS: I told him between three and four  
9 o'clock.

10 THE COURT: Told him between three and four  
11 o'clock. All right.

12 Q Did --

13 THE COURT: When did he say?

14 THE WITNESS: He said, try not to make it too  
15 much after four o'clock because I am leaving for  
16 upstate, going on a trip.

17 THE COURT: Okay, very well.

18 Next question.

19 Q Did you in fact proceed to the apartment that  
20 afternoon?

21 A Yes, sir. I arrived there approximately three  
22 forty-five p.m.

23 Q And who was with you?

24 THE COURT: You are too fast. Give him a chance  
25 to finish. You can't wait until he finishes. Slow,

1  
2 relax.

3 MR. GOULD: I apologize, your Honor.

4 THE COURT: No. You don't have to apologize.  
5 Takes a little experience to get that way. So don't  
6 worried.

7 What happened? Just talk to him wisely and  
8 without rushing.

9 Very well, now you arrived a little what?

10 THE WITNESS: Approximately 3:45 p.m. I arrived  
11 at Woodside and 68th St. with Agent Heywood.

12 THE COURT: Wait a minute. Let me put that in.  
13 Woodside what?

14 THE WITNESS: Woodside and 68th St.

15 THE COURT: And 68th with whom?

16 THE WITNESS: Agent Phil Heywood.

17 Q Do you remember the exact address?

18 A 4153 68th St.

19 THE COURT: Very well, next.

20 Q What happened then?

21 A I left Agent Heywood in the vehicle with \$14,000  
22 flash roll.

23 THE COURT: Flash roll, 14,000?

24 THE WITNESS: And a dummy bag containing  
25 newspaper. I left my weapon in the vehicle and I

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**THE COURT:** Wait a minute. How was that? White

source package, you mean-in a package?

THE WITNESS: No. White saucer.

THE COURT: Saucer. A saucer, I see. All right.

A Which contained a brown manilla envelope. I picked up the brown manilla envelope and opened it and removed from it a clear plastic bag containing a quantity of white crystalline powder. I opened the plastic bag and I took a sniff of it. Then I asked Montiehl if he had a scale.

He walked over to the counter by the refrigerator and removed the small poster scale from inside the counter. While he was over there I asked him if he had any tin foil. He said he did. He placed the poster scale on a counter and removed the package of tin foil wrap from a jar and brought it over to me. I then took a small piece of a corner of the tin foil and put a small quantity of white crystalline powder on it from the plastic bag. Montiehl lit a match. He held it underneath the tin foil package. The substance melted and dissolved.

(continued next page)

Carrion-direct

BY MR. GOULD:

Q Mr. Carrion, from your experience in undercover work and working with drugs, will you describe what that test is supposed to show?

MR. CUTLER: Objection, if your Honor pleases.

MR. GOULD: I will qualify him at the trial.

Merely at the moment I wish to --

THE COURT: You can cross-examine him. I will permit it.

A This is a test used on the street to determine if the suspected substance has been diluted with anything, either starch or if cut too much.

Q How about smelling it?

A It is a test for telling you if it is cocaine.

Q Does cocaine have a distinctive smell?

A Yes.

THE COURT: Did you smell it?

THE WITNESS: Yes.

Q What did it smell like?

A Like cocaine.

Q Continue, please. As to what happened.

A After he held the match and the substance melted and dissolved and disappeared, there was a white film left on the tin foil. It showed me it was good cocaine and

MP:jm  
T2amR1

Carrion-direct

had been cut too much.

I wrapped up the tin foil piece of paper and threw it in the ashtray. I walked over to the postage scale with the package of the white crystalline substance and placed it on top of the scale. I noticed it only read fourteen ounces and I mentioned it to Montiehl.

At that time, he said -- he checked it -- "You're right, only fourteen ounces," and then mentioned it to Alvaro. He said, "It can't be, I bought four eighths."

Q What did you take that to mean?

A Four eighths of a kilo, approximately sixteen ounces.

Q Go on.

A Montiehl told him to check it. After he checked the scale, he said, "It's right, we will have to do something about the price."

I asked him, "By the way, what is the price?" After he said thirteen thousand, I said, to both of them: "Would you take twelve five?"

They looked at each other and Alvaro shook his head.

Q Shook his head in what direction?

A Negative direction.

Q Side to side?

1 Carrion-direct

2 A Yes. And Montiehl said, "No, it has to be  
3 thirteen because we have to make some money."

4 THE COURT: All right, let's proceed.

5 BY MR. GOULD:

6 Q Did there come a time when you left the  
7 apartment?

8 A I suggested to Montiehl that he accompany me  
9 outside to the car to pick up the money and he said, "No,  
10 you get the money and we will wait for you here."

11 THE COURT: Wait a minute. You talked to  
12 Montiehl and he said, "You go down and pick up the  
13 money and we will wait for you in the apartment"?

14 THE WITNESS: Yes.

15 THE COURT: All right.

16 A (continuing) I started to walk out of the  
17 apartment with the package and Montiehl said --

18 Q Which package was this?

19 A The white crystalline powder. Montiehl said,  
20 "No, leave the package here until you come back."

21 I left the package. I went to the vehicle.  
22 I informed Agent Haywood that there were two males in the  
23 apartment and approximately fourteen ounces of cocaine.

24 I grabbed the dummy bag of flash money  
25 containing newspaper and my weapon and we started to go into

Carrion-direct

the --

THE COURT: Wait a minute. Dummy with the flash roll?

THE WITNESS: No.

THE COURT: Where is the flash roll?

THE WITNESS: Left in the vehicle.

THE COURT: Did both of you go back?

THE WITNESS: Yes.

THE COURT: You left the flash roll by itself in there?

THE WITNESS: Yes, sir.

THE COURT: All right; go ahead.

A (continuing) I grabbed my weapon and we went back to the apartment and Agent Haywood and myself went through the first door.

Q Just a minute. Did you say anything to Agent Haywood in the car?

A That there were two males in the apartment and fourteen ounces of cocaine.

We knocked on the door and we were joined by Detectives Gunyon, G-u-n-y-o-n, and Manthe, M-a-n-t-h-e. We started to knock on the apartment door and got no response. We heard what appeared to be like the bathroom flushing.

Carrion-direct

Q What do you mean, like the bathroom flushing?

A The commode of the bathroom.

At that time --

MR. CUTLER: I object to that, if your Honor  
pleases.

THE COURT: Why?

MR. CUTLER: I will tell you why, I could see  
him testifying that he heard something, but to  
testify what the noise sounded like --

THE COURT: He could testify. He cannot say  
for sure it is the bathroom, but he heard --

MR. GOULD: It's a common, everyday sound,  
and someone has to make some analogy.

THE COURT: I am afraid it is a common,  
everyday sound.

MR. CUTLER: I will withdraw the objection.

THE COURT: You heard what sounded like  
flushing of the toilet?

THE WITNESS: Yes.

THE COURT: Go on.

A (continuing) At that time Agent Haywood  
announced, "Federal agents, open up." There was still no  
response. I tried to kick down the door.

THE COURT: I see.

Carrion-direct

A (continuing) I hit it twice and I hurt my  
feet.

Q Did you succeed in kicking down the door?

A No.

THE COURT: Did you yell, "Federal agents"?

THE WITNESS: Agent Hawwood did.

THE COURT: He said, "Federal agents, open  
up"?

THE WITNESS: Yes.

THE COURT: Is that your testimony?

THE WITNESS: Yes.

THE COURT: You heard him?

THE WITNESS: Yes.

THE COURT: What did the other detectives do?

THE WITNESS: Manthe tried to kick the door in.

THE COURT: You were kicking on the door and  
they heard that?

THE WITNESS: Yes.

THE COURT: I will strike that out, I don't  
know what they heard.

THE WITNESS: Detective Manthe kicked on the  
door five or six times.

BY MR. GOULD:

Q Can you describe the door?

Carrion-direct

A A steel door, around six or seven foot high, three and a half foot wide.

THE COURT: A steel door?

THE WITNESS: Steel-covered.

THE COURT: All right, proceed.

A (continuing) After a while, Montiell opened the door and we entered the apartment.

MR. GOULD: Your Honor, I have no further questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. CUTLER:

Q Mr. Carrion, you said you are in the Police Department eleven years in Suffolk County?

A Yes.

Q Out of the eleven years, nine years were spent in doing ordinary police work?

A No, approximately two and a half years.

Q What did you do the rest of the time?

THE COURT: Twenty and a half years?

THE WITNESS: Two and a half.

Q What did you do the other time?

A Undercover narcotic and gambling.

Q And gambling?

## Carrion-cross

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A Yes.

Q You mean bookmaking and numbers?

A Yes.

Q Has it been your job always to be a buyer of drugs?

A No, I have been on surveillances a couple of times.

Q Primarily your work has either to be to buy drugs or watch someone else buy?

A Yes.

Q Do you do any other detective work?

A I have been temporarily assigned to vice.

Q That is watch gamblers and prostitutes?

A Prostitutes.

Q Arrest them if you caught them soliciting in the street or over the telephone, is that it?

A Yes.

Q Like the vice squad?

A Yes.

(continued on next page)

Carrion-cross

BY MR. CUTLER:

Q Did you do any investigation concerning Edward Montiel before you received a phone call?

A No.

Q Had you ever met Mr. Edward Montiel before you received a phone call?

A Yes.

Q Where?

A At his apartment.

Q When was that, that you first met him at his apartment, what date?

A On the 19th.

MR. GOULD: Your Honor, this getting a little far afield for a suppression.

THE COURT: No, I suppose he wants to bring out how he identified Montiel's voice.

Did you talk to him that day?

THE WITNESS: Yes.

THE COURT: What date was that?

THE WITNESS: September 19th.

THE COURT: You saw him at his apartment?

THE WITNESS: Yes.

THE COURT: I think we brought that out on direct.

MP:jm  
T2amR2

Carrion-cross

What year?

BY MR. CUTLER:

Q This is 1974?

A Yes.

Q When you spoke to him at the apartment, you spoke to him face to face?

A Yes, sir.

Q And the conversation was concerning drugs?

A Yes, sir.

Q Did somebody bring it to his apartment?

A Yes, sir.

Q Who brought you there?

A A confidential informant.

Q The fellow known as Flip?

A Yes.

Q Had you arrested Flip prior to meeting Flip?

A No.

Q Did you know that Flip had been arrested?

A No, sir.

Q Is it your testimony you have no information concerning Flip at all?

A Correct.

Q Did you have any information concerning Mr. Montiehl as a result of your own police investigation?

Carrion-cross

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A I did no investigation on my own.

Q You went in and spoke to him?

A Yes.

Q How long were you in his house?

A Approximately fifteen, twenty minutes.

Q Had you ever spoken to him on the telephone before or other than the time you received a telephone call?

A No, sir.

Q Now, weren't you interested in, during the course of your work, finding out where drugs were coming from? Wasn't that the information you asked Mr. Montiell about?

A Pardon me?

Q Didn't you ask Mr. Montiell if he knew anything about where drugs could be obtained, cocaine?

A No, sir.

Q What did you ask him about?

A What time?

Q When you first met him.

A I was going to purchase two kilos of cocaine from him.

Q That isn't what I asked you, Officer.

THE COURT: Flip brought you up there?

THE WITNESS: Yes.

1 Carrion-cross

2 THE COURT: When he brought you up there, did  
3 you have a conversation with Mr. Montiel?

4 THE WITNESS: Yes.

5 THE COURT: Well, what did he say to you and  
6 what did you say to him? You weren't there to  
7 discuss a football game, were you?

8 THE WITNESS: No. I was there to purchase  
9 two kilograms of cocaine.

10 THE COURT: What did you say to him?

11 THE WITNESS: I asked him if he had the  
12 package and he said no.

13 THE COURT: The package?

14 THE WITNESS: The package.

15 MR. CUTLER: Excuse me.

16 THE COURT: You want to continue?

17 MR. CUTLER: No, you're doing very well, Judge.

18 THE COURT: Did Flip say to you he had a  
19 package or what? Did you come in out of the blue and  
20 say: You got the package?

21 THE WITNESS: Flip made arrangements for me to  
22 purchase two kilos.

23 THE COURT: How do you know that?

24 THE WITNESS: This is what Flip told  
25 Agent Haywood.

## Carrion-cross

1  
2 THE COURT: Flip told Haywood and Haywood  
3 told you?

4 THE WITNESS: Yes.

5 THE COURT: Flip came up with you?

6 THE WITNESS: Yes.

7 THE COURT: Didn't Flip tell you directly?

8 THE WITNESS: No.

9 THE COURT: Flip said nothing?

10 THE WITNESS: No.

11 THE COURT: Both of you walked up mum? You  
12 didn't talk to each other?

13 THE WITNESS: Correct.

14 THE COURT: That is strange.

15 THE WITNESS: No, we laid out a story where  
16 he knew me from.

17 THE COURT: Who?

18 THE WITNESS: Myself and Flip.

19 THE COURT: Then you did talk to Flip before  
20 you went up there?

21 THE WITNESS: Yes.

22 THE COURT: You did discuss what?

23 THE WITNESS: The story, the background.

24 THE COURT: Did Flip tell you that you could  
25 buy stuff up there?

## Carrion-cross

1  
2 THE WITNESS: He told Agent Haywood that  
3 Montiehl had two kilos for sale.

4 THE COURT: You were present?

5 THE WITNESS: Yes.

6 THE COURT: You made an arrangement with Flip  
7 as to your background and his background?

8 THE WITNESS: Yes.

9 THE COURT: You rapped on the door?

10 THE WITNESS: Yes.

11 THE COURT: What did Mr. Montiehl say when he  
12 saw you? Or what did you say to him? Were both of  
13 you there at the same time?

14 THE WITNESS: Yes.

15 THE COURT: What was said, hello?

16 THE WITNESS: I was introduced to him by Flip  
17 as John. I asked him if he had the package.

18 THE COURT: What did Montiehl say when you  
19 were introduced to him as John? Did he say: Glad  
20 to meet you, John?

21 THE WITNESS: He just said, "Hi."

22 THE COURT: What is next?

23 THE WITNESS: We sat down at the kitchen table  
24 and I asked him, "Is the package here?" Montiehl  
25 said, "No, the man was here but he got scared off

2  
1 Carrion-cross

2 because he noticed people following him."

3 THE COURT: Oh. Was anybody in there besides  
4 Montiehl at the time?

5 THE WITNESS: Myself, Flip and Montiehl.

6 THE COURT: Nobody else?

7 THE WITNESS: Not that I know of.

8 THE COURT: All right. I'm sorry to interrupt.

9 MR. CUTLER: That was excellent, your Honor.

10 CROSS-EXAMINATION

11 BY MR. CUTLER (continued):

12 Q So that now on that first visit when you first  
13 approached Mr. Montiehl, you had Flip with you who was the  
14 confidential informant, isn't that so?

15 A Yes.

16 Q Your purpose was to try to obtain what the  
17 confidential informant said Mr. Montiehl is able to obtain  
18 for you, cocaine?

19 A Yes, sir.

20 Q And he did tell you there was another party  
21 who was frightened off?

22 A Yes.

23 Q Now, when you left Mr. Montiehl that day, did  
24 you try to determine as a police officer what you could find  
25 out about Montiehl from other police sources?

## Carrion-cross

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A No.

Q Did you ever look to see if he had a police record?

A No, sir.

Q Did you ever ask -- did you call up the central intelligence in the New York Police Department and ask whether they had a dossier on him?

A No.

Q Did you call up the narcotics squad and ask --

A No.

Q Did you do any other police work other than what you described, visiting there with Mr. Haywood and with Flip?

A Just the undercover work.

Q Other than coming up to the apartment with Flip, did you do any other police work?

A No.

Q That was the background you are referring to with respect to the second call from Mr. Montiehl, isn't that right?

A Yes.

MR. GOULD: Your Honor, I don't think I understand. I don't think there is any testimony as to a first call.

Carrion-cross

MR. CUTLER: I meant after the first visit.

THE COURT: When you left, did you give  
Mr. Montiell your phone number?

THE WITNESS: Yes.

THE COURT: Did you tell him to call you?

THE WITNESS: Yes, call me around  
twelve o'clock.

THE COURT: The next day?

THE WITNESS: The following day.

THE COURT: When did you get a call?

THE WITNESS: Approximately 12:30.

THE COURT: You did get a call?

THE WITNESS: Yes.

THE COURT: What was the voice on the other  
side? What did it say? This is Montiell?

THE WITNESS: "This is Eddie."

THE COURT: Did you recognize the voice as  
that of Mr. Montiell?

THE WITNESS: Yes, I did.

BY MR. CUTLER:

Q You had spoken to him on the telephone before?

A Correct.

Q Are you positive that the voice you heard was  
the same voice as the person who you had spoken to in person

Carrion-cross

that night?

A It sounded a lot like the person I spoke to the previous night.

THE COURT: Nobody was in the room besides Flip, you, and Montiehl when you gave Montiehl your phone number and told him to call the next day?

THE WITNESS: I didn't see anybody else.

THE COURT: Nobody else was introduced to you and you didn't see anybody else?

THE WITNESS: Correct.

BY MR. CUTLER:

Q Did you receive many telephone calls during the day?

A No, not many.

Q How many buys approximately had you done that month or how many investigations and deals had you done that month, approximately?

A That was the only one.

Q Since then, have you had any other deals?

A Yes.

Q Would you say that the bulk of your dealings are with people who speak Spanish?

A Yes, sir.

THE COURT: By the way, were you speaking

Carrion-cross

Spanish to Mr. Montiel?

THE WITNESS: Yes.

THE COURT: Did the phone call come over to you in Spanish?

THE WITNESS: Yes.

THE COURT: Do you need an interpreter here?

MR. CUTLER: Well, Judge, I would need one, but my client speaks English.

THE COURT: You are not going to have any Spanish testimony --

MR. CUTLER: If there is no Spanish testimony, we don't need it.

BY MR. CUTLER:

Q Officer, getting back to this telephone conversation, you at this point were trying to get this person who you were introduced to to find out where you could get these drugs, is that right?

A No, sir.

Q Weren't you curious to know where the drugs were coming from?

A Myself, no.

Q Are you telling the Judge your only interest is to follow the orders that you get, is that what you are saying?

Carrion-cross

A Make the purchase is my orders.

THE COURT: That is all?

THE WITNESS: Yes.

Q As an officer, you are not concerned with anything else?

A Correct.

Q You just go up there to deliver money and pick up some drugs?

A Correct.

Q You never expected to deliver any money in this case, did you?

THE COURT: Of course, that is objectionable.

Don't you see that it is objectionable, Mr. Gould?

MR. GOULD: Yes, this has gone far afield.

THE COURT: But you're just sitting there.

MR. GOULD: With a distinguished jurist like yourself, I'm sure you can sort it out.

THE COURT: I don't want to do that.

MR. CUTLER: I won't do it again.

THE COURT: All right.

BY MR. CUTLER:

Q In this particular situation, Officer, you testified that you had met in this apartment with two people, is that correct?

## Carrion-cross

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2 A Yes.

3 Q You never saw the material that was in that  
4 apartment in anyone's pocket or their hand or anything, did  
5 you?

6 A Correct.

7 Q You, of your own knowledge, never really  
8 tested this chemically to determine what it was, did you?

9 A No, I did not.

10 Q You personally never took any courses in any  
11 chemical --

12 MR. GOULD: Objection, your Honor.

13 THE COURT: I will sustain the objection. He  
14 did stand up to object.

15 MR. GOULD: This is becoming a full-scale  
16 discovery of the case.

17 THE COURT: Yes, it is extended. I will give  
18 you two more questions and I will end it.

19 BY MR. CUTLER:

20 Q When you left this apartment -- well, I will  
21 rephrase that.

22 You could have arrested these two people at  
23 the point you were inside the apartment?

24 THE COURT: That is objectionable. What could  
25 have been done or might have been done is irrelevant.

Carrion-cross

Let's get down to the facts.

BY MR. CUTLER:

Q Approximately how many policemen in all were at the scene of this break-in?

MR. GOULD: Objection to the characterization.

MR. CUTLER: I will rephrase it.

Q To the invited entrance into the apartment, how many policemen were there?

THE COURT: You are talking about the second time?

MR. CUTLER: Yes.

MR. GOULD: Can he be more specific?

THE COURT: I know what he means. The question is whether the witness knows.

At the time you came back to the apartment door of Eduardo Montiel, and rapped on the door, how many other law enforcement officials were there besides yourself?

THE WITNESS: Three others.

THE COURT: How many entered the premises?

THE WITNESS: I have no idea.

Q Eventually --

THE COURT: The door was kicked on, both of you kicked it?

Carrion-cross

THE WITNESS: The door was opened by  
Mr. Montiehl.

THE COURT: How many went in there?

THE WITNESS: Myself --

MR. GOULD: And --

THE COURT: Wait a minute. Who is talking  
here? You must not do that in the trial. You will  
not do that in the future.

THE WITNESS: -- (continuing) -- Agent Haywood,  
Detective Manthe --

THE COURT: That is three.

THE WITNESS: Detective Gunion.

THE COURT: That is four.

THE WITNESS: I believe some other agents  
walked in later on.

THE COURT: You were then how many?

THE WITNESS: Just four of us.

THE COURT: You say you believe other agents  
came in? You don't know or you just heard -- what  
are you talking about, something you saw or something  
you believe?

THE WITNESS: I saw the agents in there.

THE COURT: Agents were in there?

THE WITNESS: Yes.

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Q Tell the judge approximately how many, were there ten, twenty or thirty agents?

THE COURT: No, he said four.

MR. GOULD: Objection.

THE COURT: The question is, what comes in later is not pertinent.

Q After you entered the place, you walked in with three other men; is that right?

A Yes.

Q What did you do when you came into the place?

A I assisted in the search of the apartment.

O Officer, please.

MR. GOULD: Your Honor --

Q Would you please tell his Honor, the Judge, what you actually did?

THE COURT: Instead of using the word assisted, did you pick up anything? Did you go and look at this and that?

MR. CUTLER: After twelve years, I am sure the officer is familiar with these questions.

THE COURT: Mr. Cutler, how many cases have you tried?

MR. CUTLER: Not as many as your Honor did.-

THE COURT: They are just as familiar but they

don't know what the lawyers are going to ask every time.

I want to get on with this.

All right.

Do you know what Mr. Cutler is trying to ask you?

What did you do physically? You said you assisted. I

will allow that in since this is a pretrial hearing

and not before the jury. I certainly will permit it.

Before the jury we are not going to do that, though.

I think we are just going to keep ourselves to

essentials and relevant things and not going to have

any long cumulative questions or examinations which

are unnecessary.

What did you do, do you recall?

THE WITNESS: Walked into the apartment. I

started looking for the other individual.

THE COURT: Whose name was?

THE WITNESS: Alvero.

THE COURT: Did you find him?

THE WITNESS: No, sir.

THE COURT: You didn't find him?

THE WITNESS: No.

THE COURT: You looked in all the cupboards?

THE WITNESS: Yes.

THE COURT: All the rooms?

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THE WITNESS: Yes.

THE COURT: Did you do anything else?

THE WITNESS: I retrieved the tin foil paper.

THE COURT: You had thrown it away?

THE WITNESS: I placed it in the ashtray.

THE COURT: What else did you do?

THE WITNESS: That's all.

THE COURT: Did you see anybody else do anything

THE WITNESS: Yes.

THE COURT: What did you see somebody else do?

THE WITNESS: I saw Detective Gunion find the  
scale.

THE COURT: Where was the scale?

THE WITNESS: It was in a cupboard next to the  
refrigerator.

THE COURT: Next to the refrigerator in a  
cupboard?

THE WITNESS: Yes.

THE COURT: What else did you see?

THE WITNESS: Detective Gunion found a roll of  
tin foil.

THE COURT: Where?

THE WITNESS: On the kitchen counter.

THE COURT: What else did you see somebody else

do?

THE WITNESS: That's all.

Q Are you testifying from your recollection or are you testifying from your memory of having read some notes?

A From my recollection.

Q Have you spoken to the prosecutor in this case before taking the witness stand?

A I did.

THE COURT: I can't imagine why not. These questions in the absence of the jury, these questions come before us again and again. The jury must know that he must have spoken to the prosecutor. How could you put a witness on the stand and not speak to him? If you are going to put a witness on the stand I guarantee you have spoken to him.

MR. CUTLER: Right.

Q Did the prosecutor show you a list of any information or any of your testimony at the grand jury?

A No.

Q Did you testify at the grand jury?

A Yes, I did.

MR. CUTLER: Can I look?

THE COURT: Not at this stage. Unless they want to. It's up to them.

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2 Have you got it, Mr. Gould?

3 MR. GOULD: I have another witness who will  
4 testify what happened in the house.

5 THE COURT: Let's proceed. Now it's five of one.  
6 We are going to put on the other witness.

7 MR. CUTLER: I think we are entitled to have  
8 this undercover agent, this fellow --

9 THE COURT: Flip?

10 MR. CUTLER: Flip. We are entitled to have Flip  
11 testify because he was the only one present other than  
12 the policeman and the alleged defendant or the  
13 defendant.

14 THE COURT: That doesn't necessarily follow.  
15 If you can't prepare your case without Flip that is  
16 one thing. I think you can. If Flip is available  
17 initially you can speak to him. I don't know whether  
18 Mr. Gould knows where he is.

19 MR. GOULD: Defense counsel has known who  
20 the informant is and he is not in the control of the  
21 Government.

22 THE COURT: There is no problem.

23 MR. GOULD: In addition, he is not there at the  
24 day of sale.

25 THE COURT: He wasn't there at the -- there was

no sale.

MR. GOULD: Excuse me. At the attempted sale.

THE COURT: Anyway, that is up to you. If you want him, bring him in. Do you know where he is?

MR. CUTLER: I was going to ask.

Q Do you know where this informant is?

A No, I do not.

MR. CUTLER: Thank you.

THE COURT: Next.

MR. GOULD: The Government calls Agent Philip Heyward.

P H I L I P H E Y W A R D , a witness called herein, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. GOULD:

Q How old are you?

A 32.

Q By whom are you employed?

A The DEA.

Q How long have you been employed by the DEA?

A Four years in June.

Q What does DEA stand for?

THE COURT: Everybody knows that.

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Q Drawing your attention to September 20, 1974,  
did you have occasion to see a Mr. Eduardo Montiehl on that day

A Yes.

Q Do you see Mr. Montiehl here today?

A Yes, he is sitting next to Mr. Cutler, he has a  
blue shirt and blue jacket on.

MR. GOULD: May the record reflect that is the  
defendant.

THE COURT: Yes.

Q Can you describe the events of that day that led  
up to your seeing Mr. Montiehl?

A Yes, sir. Approximately 3:45 that day  
Detective Carrion and myself drove up in the vicinity of  
Mr. Montiehl's apartment.

Q Where was that?

A The apartment was at 41-53 68th St. in Woodside.

Q Go ahead.

A At 3:45 or 3:50, Detective Carrion exited the  
OGV, official government vehicle, and went to the apartment.

THE COURT: Wait a minute. Somebody exited  
something.

Q Could you repeat that?

A The official government vehicle.

Q Mr. Heyward, how were you dressed?

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2 A Civilian clothes.

3 Q What kind of work were you doing?

4 A Undercover.

5 Q Please continue from when you saw Agent Carrion?

6 A Detective Carrion went to the apartment,

7 Mr. Montiehl's apartment. After about five or ten minutes,

8 Detective Carrion came back to the car.

9 Q Did he say anything?

10 A He saw the package in the apartment and there

11 were two guys in the apartment.

12 Q What did you take it to mean, the package?

13 A He told me it was fourteen ounces of cocaine.

14 Q What happened?

15 A At the time I advised the other surveillance

16 units that Detective Carrion and myself were going back to the

17 apartment.

18 Q How?

19 A By two-way radio.

20 Q Go ahead.

21 A Detective Carrion and myself exited the

22 vehicle and went to Mr. Montiehl's apartment. We knocked on

23 the door and got no answer. But we heard some flushing --

24 Q Don't say we.

25 A I heard some flushing of water like in a toilet

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bowl and some running of water. We kept on knocking on the door and received no answer. I yelled out that we were federal agents and we tried to kick in the door.

Q Who tried?

A Myself, Detective Carrion and Detective Manthe. We tried to but the door wouldn't give.

Then eventually, Mr. Montiell opened up the door. Detective Gunyon and Detective Manthe got in the kitchen to arrest him --

Q What did you --

THE COURT: Who took what?

A Detective Gunyon and Manthe --

Q Did they say you were under arrest?

A Yes, they took him into the kitchen and I went to the back bedroom.

Q Now, did there ever come a time when you heard them giving any warnings to Mr. Montiell?

A Yes, sir.

Q Will you describe that?

A I was coming back to the kitchen and I heard them giving the rights to him.

Q What did you mean by that?

A Constitutional rights, like --

MR. CUTLER: Objection, your Honor.

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THE COURT: Why?

MR. CUTLER: Because it is a conclusion of what he said he heard. It depends, --

THE COURT: Now, you are talking about the use of the word "constitutional"?

MR. CUTLER: Yes.

THE COURT: He is talking about the Miranda warnings. Is that right?

THE WITNESS: Yes.

MR. CUTLER: That is different.

THE COURT: What did you think?

MR. CUTLER: My client didn't understand.

THE COURT: What did you say?

THE WITNESS: I didn't, sir.

THE COURT: You heard?

THE WITNESS: I heard Detective Gunyon and Manthe.

THE COURT: Did you hear them give it?

THE WITNESS: Yes.

THE COURT: What did you hear?

MR. CUTLER: I object. Two men couldn't possibly have been doing it.

Q Did you hear one or the other?

A Yes, but I don't know which one.

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THE COURT: He just heard the voice of one or the other and he doesn't recall which one.

THE WITNESS: That's right, yes.

THE COURT: Did you hear them talking to him? At the time these warnings were given, were you there and you heard it?

THE WITNESS: I heard it.

THE COURT: Could you see them talking to Monticelli at the time the warnings were given?

THE WITNESS: I saw them talking to Mr. Monticelli, yes.

THE COURT: At the same time you heard the words come from somebody?

THE WITNESS: Yes, sir.

THE COURT: You don't know which one?

THE WITNESS: No, sir.

Q What did you do in the apartment?

A We were looking for the other defendant.

MR. CUTLER: Objection.

Q Just what you personally did.

THE COURT: What happened?

THE WITNESS: I ran in the back bedroom. I ran in the bathroom. I went in the kitchen. I looked through closets, under the bed. I was trying to find the other defendant.

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2 THE COURT: Oh.

3 Q Did you hear the defendant say anything about  
4 the other defendant?

5 A Mr. Montiehl told the detective that Alvero --  
6 I found out his name -- went out the back window in the  
7 bedroom.

8 Q Did you hear him tell the detective that?

9 A Yes.

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Haywood-direct

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BY MR. GOULD:

Q This was before or after you heard and seen them giving the warnings?

A I don't know.

Q You don't remember?

A No.

Q What else in the apartment -- did there come a time when you found certain objects in the apartment?

A While this was going on, Mr. Monttiell's wife came in the apartment and she was walking in the kitchen and around the apartment.

THE COURT: Is she going to be a witness? She shouldn't be here is she is.

MR. CUTLER: Please step out.

THE COURT: Okay. Is she going to be a witness this morning?

MR. CUTLER: She might be, Judge.

Q Continue.

A Because of this, she was around the apartment, we were looking for either weapons or other drugs that had been destroyed -- I went to the bathroom and I noticed some white powder on the toilet bowl. Detective Manthe was with me. He scraped the white powder off with a matchbook cover and gave it to me.

Haywood-direct

THE COURT: Wait a minute. Scrapped it from

where?

THE WITNESS: The toilet bowl, your Honor.

THE COURT: Underneath -- how can you scrape it from a toilet bowl?

THE WITNESS: Like on the edge, above the water.

THE COURT: Above the water on the edge -- or edge of bowl -- all right. You scraped it off?

THE WITNESS: No, Detective Manthe did.

MR. CUTLER: He has a deep voice and it is difficult to hear him, your Honor.

THE COURT: I can't ask you to change your voice, but it is very difficult. Can you go nearer to the microphone?

All right, what happened? You have to speak up and don't let your voice drop.

THE WITNESS: Yes sir, your Honor.

THE COURT: What is the story about this other man, who is he? Who was the other detective?

THE WITNESS: The other defendant I eventually found out was --

THE COURT: No, the detective. What were you doing in there?

Haywood-direct

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2 THE WITNESS: Detective Manthe was scraping  
3 the white powder off the toilet bowl.

4 THE COURT: How?

5 THE WITNESS: With a matchbook cover.

6 THE COURT: All right.

7 THE WITNESS: Detective Manthe gave me the  
8 matchbook cover. I went to the kitchen and I found  
9 an airmail envelope, a blue one. I put the match-  
10 book cover in the envelope and kept the envelope in  
11 my possession.

12 After this, Detective Gunyon gave me the  
13 scale, the aluminum foil he had found along with  
14 marijuana pipes and a shotgun.

15 THE COURT: He gave you the scale and the  
16 marijuana pipes and the shotgun.

17 BY MR. GOULD:

18 Q What kind of shotgun was that?

19 A I believe it is a 12 guage shotgun.

20 THE COURT: All right. This lady came in,  
21 Mr. Montiehl's wife. What did she do?

22 THE WITNESS: We tried telling her that her  
23 husband was under arrest.

24 THE COURT: Did you tell her? Who did it?

25 THE WITNESS: I don't know. Mrs. Montiehl

Haywood-direct

was very upset and she was an asmathic and we were trying to keep her calm.

THE COURT: What?

MR. CUTLER: An asmathic.

THE WITNESS: We were trying to keep her calm.

THE COURT: What did you tell her? Did you or somebody else? This vagueness has to leave us. If you're going to testify, say I did that or this, but saying, "We tried to keep her calm --" what did you do, what did you see and what did you hear? Do you understand?

THE WITNESS: Yes.

THE COURT: The jury doesn't want this vagueness at all. What happened? She came in. Who spoke to her first?

THE WITNESS: I don't know, your Honor.

THE COURT: Did you speak to her?

THE WITNESS: Not when she first came in.

BY MR. GOULD:

Q Did you ever speak to her?

A Yes.

THE COURT: Did you hear anybody speak to her?

THE WITNESS: Yes.

THE COURT: Who did you hear speak to her?

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THE WITNESS: I don't remember.

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THE COURT: You don't know who it was?

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THE WITNESS: Yes.

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THE COURT: But you heard voices and you knew

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it was among those three other detectives?

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THE WITNESS: Yes, sir.

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THE COURT: Did you ever speak to her?

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THE WITNESS: Yes.

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THE COURT: When?

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THE WITNESS: A little while after.

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THE COURT: What did she say to you? What did

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you say to her?

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THE WITNESS: I told her her husband was under

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arrest. I was trying to keep her calm.

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THE COURT: Next.

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BY MR. GOULD:

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Q Did there come a time when you --

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THE COURT: She didn't say anything? She

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said she was an asthmatic?

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THE WITNESS: Yes.

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THE COURT: That is all?

23

THE WITNESS: She couldn't understand why we

24

were putting her husband under arrest.

25

THE COURT: She spoke Spanish?

Heyward-direct

THE WITNESS: Broken English.

THE COURT: All right. Next.

BY MR. GOULD:

Q Did there come a time when you left the apartment?

A Yes, I did.

Q What happened then?

A I took the evidence and Mr. Montiehl to my Government vehicle.

Q When you say the evidence, is that the evidence found in the house?

A Yes. The white powder from the toilet bowl, shotgun, scale, the aluminum foil and tin foil that Detective Carrion found.

THE COURT: You've got to speak up.

(Last answer read by the reporter.)

THE COURT: Is that it?

THE WITNESS: Yes. And the marijuana.

THE COURT: It's better not to talk with that.

That is the answer.

THE WITNESS: I never did like these things. All right, I'll speak without the microphone.

THE COURT: Next.

Q What did you do with the evidence?

Heyward-direct

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2 A I put it in my official car.

3 Q Anybody else in the car with you?

4 A No, sir. Excuse me, I put Mr. Montiehl in the  
5 back seat, handcuffed.

6 Q What happened?

7 A Proceeded from the area and I read Mr. Montiehl  
8 his rights again.

9 THE COURT: In Spanish?

10 MR. CUTLER: Objection, your Honor. He said,  
11 "I read him his rights again."

12 MR. GOULD: Let me proceed and --

13 THE COURT: Don't worry about that.

14 Q Did you read that from any paper?

15 A Yes, sir. I read it from a form that we  
16 always carry.

17 THE COURT: It wasn't the first time you read  
18 it to him?

19 THE WITNESS: The first time I read it to him  
20 was in the car myself.

21 THE COURT: I thought you said again.

22 THE WITNESS: I made a mistake.

23 THE COURT: That is the first time?

24 THE WITNESS: Yes.

25 Q The first time you read it to him?

A Yes.

MR. CUTLER: Objection to the question.

THE COURT: This is a suppression hearing.

Q Do you have the card with you that you read to him?

A Yes.

MR. GOULD: Can I have this marked? Rather than read it now, if the defense counsel wishes to see it, to see what we are referring to, he may.

Were these the rights you read to him?

THE WITNESS: Yes.

THE COURT: Every line?

THE WITNESS: Yes.

BY MR. GOULD:

Q What, if anything, did he say to you?

A He understood his rights because he was arrested previously.

Q He said that in what language?

THE COURT: Did you hear that?

MR. CUTLER: I heard that.

A In English.

THE COURT: In English?

THE WITNESS: Yes.

THE COURT: Next.

Heyward-direct

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2 Q       Thereafter, did you have any conversation with  
3 the defendant?

4 A       Yes. First of all I asked the defendant what  
5 happened. He said he saw Detective Carrion and myself  
6 walking towards his apartment. But he wasn't that afraid  
7 of me because he had seen me on a previous occasion. When  
8 he saw the other surveilling agents, he told this guy Alvaro  
9 to get out of the apartment because the cops were coming.

10 THE CLERK: A B&D 13A marked Government's  
11 Exhibit 1 for identification.

12 THE COURT: You marked it?

13 MR. GOULD: Yes.

14 THE COURT: What is it?

15 MR. GOULD: It is a --

16 THE COURT: What number?

17 MR. GOULD: One, your Honor.

18 THE COURT: Okay.

19 (So marked.)

20 BY MR. GOULD:

21 Q       Was there any other conversation between you?

22 A       He said he knew that Flip was the informant in  
23 this case. I denied it and told him he wasn't the informant  
24 because I was trying to keep Flip cool.

25 Q       What do you mean?

Heyward-direct

10  
1  
2 A I didn't want Mr. Montiehl going around saying  
3 Flip was an informant and blowing the chance to get other  
4 cases.

5 Q Was there any other conversation?

6 A Yes, I asked Mr. Montiehl whether the guy  
7 with the package was the same people as the previous night,  
8 the people with the two kilos of cocaine. He said no, it  
9 was different. Alvaro was different.

10 Q Was this conversation you had with him all  
11 in English?

12 A English.

13 Q Do you speak Spanish?

14 A No.

15 Q Did he answer you?

16 A Yes.

17 Q Did he ever tell you he didn't understand  
18 what you were saying?

19 A He might have on certain words and I just  
20 repeated them and he knew what I was talking about.

21 Q Then he gave an answer to the question when  
22 you repeated?

23 A Yes.

24 Q Was there any other conversation?

25 A Just general conversation.

Hayward-direct

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Q What happened after you -- where did you go from there?

A I brought Mr. Monticelli to our office on 57th Street where we process.

Q By process, what do you mean?

A Fingerprint, take pictures, take his personal history.

MR. GOULD: I have no further questions.

MR. CUTLER: Judge, are we going to recess for lunch?

THE COURT: We are going to cross first. I want to be ready to start.

MR. CUTLER: I have had lunch already. I was thinking about your Honor. If your Honor wants to recess, I have already eaten.

THE COURT: That is very good. We will go on.

CROSS-EXAMINATION

BY MR. CUTLER:

Q Officer Heyward, were you the officer in charge of this operation?

A Yes, sir.

Q Your background is a Federal agent or police officer?

A Federal agent.

Heyward-cross

12 THE COURT: For how long?

THE WITNESS: Four years in June. Little over three years at the time of the arrest.

THE COURT: What is the name of the preceeding organization?

MR. CUTLER: Drug Enforcement Administration.

THE COURT: No.

THE WITNESS: Bureau of Narcotics and Dangerous Drugs.

BY MR. CUTLER:

Q All the time, the last four years, were spent in the New York area?

A Yes, sir.

Q Are you familiar with the police apparatus in the New York area?

A Yes, sir.

Q When did you first come into contact with this defendant, Montiell, with the investigation concerning Montiell?

A The investigation on Montiell --

MR. GOULD: Your Honor, how far afield is this going to get? I don't see the relevance.

THE COURT: I don't mind it here, but I certainly might object before a jury.

## Heyward-cross

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MR. CUTLER: It may be very relevant.

THE COURT: You mean here?

MR. CUTLER: Yes.

THE COURT: All right, we'll see.

THE WITNESS: Would you repeat it again?

BY MR. CUTLER:

Q It was a simple question. When did you first come across Montiehl in your drug investigation?

A I would say I actually tried to get in contact about June, July 1974.

Q When did you first hear about him is the question?

A I believe it was April of '74.

Q Did you hear about him from some other police source, other than Flip?

A Yes, sir.

(continued on next page)

Picozzi  
T2amR5  
follows

1  
2 Q Did you know that he had cooperated with other  
3 police authorities in connection with investigations concern-  
4 ing --

5 THE COURT: That is objectionable. That's like  
6 asking, "When did you stop beating your wife?" There  
7 is no evidence he had cooperated with any other Police  
8 Department. You're not going to do that before the  
9 jury.

10 MR. CUTLER: Judge, I wanted you to hear it.  
11 I don't expect it to go before the jury.

12 MR. GOULD: I object.

13 THE COURT: I don't think it is relevant either.  
14 In the first place, he would have to get on the stand  
15 and say it. When you ask the question, do you know  
16 that John Jones was doing this or that, that is  
17 assuming that John Jones did this and that. We have  
18 no evidence of any cooperation. And if the answer is  
19 no, of course there is an implication that John Jones  
20 did do this or that and he just doesn't know about it.  
21 That is out.

22 MR. CUTLER: I would never want that to happen.

23 THE COURT: It happens all the time. You'd  
24 be amazed.

25 MR. CUTLER: I would not want that to happen

1  
2 to you, your Honor.

3 Q Would you tell his Honor exactly --

4 THE COURT: It's before me, I will let this  
5 out.

6 Do you know anything about this cooperation in  
7 other cases?

8 THE WITNESS: No, sir.

9 THE COURT: He doesn't know about it. You're  
10 assuming it happened.

11 Q Now --

12 THE COURT: And when it happened and where it  
13 happened, if it is relevant.

14 MR. CUTLER: That is true, the last part.

15 Q Did you make any efforts to discover anything  
16 about Mr. Montie11 other than what occurred in this particular  
17 case?

18 A Yes.

19 Q What did you do?

20 A I found out that Mr. Montie11 was a source of  
21 supply for another case out of the office which resulted in  
22 the seizure of about seven ounces of cocaine. I found out  
23 that Mr. Montie11 was arrested sometime about '73 and I was  
24 trying to find out when and for what.

25 Q Did you call up the Police Department?

Hayward-cross

THE COURT: Let him finish.

A I tried to find out where Mr. Monticelli lived. I found that out. I tried to find out what kind of car, I found that out. I don't know if I went to Immigration or not. I tried to call BCI trying to get a rap sheet and picture. The information I had on him I couldn't get it.

THE COURT: Is Mr. Monticelli a citizen, as far as you know?

THE WITNESS: I found out eventually he is a legal citizen.

Q Have you seen his rap sheet today?

A The FBI rap sheet, yes.

Q Is his picture on it?

A They don't give a picture.

Q Since the case started, did you call up the New York City or Special Narcotics Prosecutor's office concerning this case?

A No, sir, not about him.

Q I am only talking about Mr. Monticelli. Did you make a telephone call to the office of the Narcotics -- of the Special Narcotics Prosecutor at any time since your investigation --

THE COURT: He has a right to get up. If this is before the jury it would be --

1  
2 MR. CUTLER: I know he has a right to get up,  
3 Judge.

4 THE COURT: It has nothing to do with this case.

5 MR. CUTLER: I am trying to get to the police  
6 motivation in this case.

7 THE COURT: That is immaterial. It's immaterial  
8 what the motivation is. What is important is what  
9 happened and nothing else. I don't care what the  
10 motivation was. I want to know what he did. That's  
11 all. If it happens before the jury you are going to  
12 be disappointed.

13 MR. CUTLER: Let me point out to your Honor  
14 that if this defendant was being utilized by the  
15 police for the purpose of leading them in a seizure  
16 of drugs or leading them to his knowledge and informa-  
17 tion as an agent to get a connection into the drug  
18 area, they knowing he had done it previously for other  
19 police agencies, he has a valid defense --

20 THE COURT: What is the defense?

21 MR. CUTLER: That he was an instrumentality of  
22 the --

23 THE COURT: What case can you cite to me? Unless  
24 you say he was employed by the Government as a  
25 governmental agent, and that is difficult to prove I

1  
2 imagine because it would be certainly a silly set-up  
3 where he has an undercover agent talk to a contact and  
4 he is already an agent working with the Government.  
5 That is a weird set-up. This is going to be good.

6 MR. GOULD: If somebody works as an informant  
7 for a police agency, he doesn't have the right to  
8 sell drugs on his own to any other --

9 MR. CUTLER: If Mr. Flip --

10 THE COURT: Wait a minute. Are you contending  
11 that Mr. Mont iell was ever employed by the United  
12 States Government?

13 MR. CUTLER: No. But I do contend, Judge,  
14 that he was utilized.

15 THE COURT: What hearing?

16 MR. CUTLER: In the same position as Flip was.

17 THE COURT: You mean promises were made?

18 MR. CUTLER: No.

19 THE COURT: That he wouldn't be utilized unless  
20 you find promises were made to Mr. Mont iell that if  
21 Mr. Mont iell gave certain information they would  
22 immunize him from prosecution. If not, then I think  
23 you are throwing dust in the air.

24 MR. CUTLER: I can try everything.

25 THE COURT: But not to take too much time doing

1  
2 it. This is not going before the jury.

3 Q When you came to the premises, you personally  
4 had never seen Mr. Montiehl before, had you?

5 A Are you talking about the day of the 20th?

6 Q The day of the occurrence.

7 A Yes, I've seen him before.

8 Q Have you spoken to him?

9 A No.

10 THE COURT: You had surveiled him?

11 THE WITNESS: Very little, yes.

12 THE COURT: What?

13 THE WITNESS: Only once.

14 THE COURT: Before?

15 THE WITNESS: Yes.

16 THE COURT: So you have seen him?

17 THE WITNESS: Yes.

18 Q When you came to the house, the purpose of  
19 entering the house was for the purpose of arresting him?

20 A And seeing the 14 ounces of cocaine and the  
21 other defendant.

22 Q You mean the other person who you believe was  
23 in the house?

24 THE COURT: Nothing ever happened with that  
25 other person?

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THE WITNESS: No, sir.

THE COURT: You never found him?

THE WITNESS: No, sir.

THE COURT: Have you searched for him?

THE WITNESS: Yes.

Q Did you ever see this other person?

A No, sir.

THE COURT: Is he Puerto Rican?

THE WITNESS: Hispanic.

THE COURT: Cuban?

THE WITNESS: I don't know offhand.

THE COURT: You looked for him and didn't find  
him. All right.

Q When the door opened you said Mr. Mont<sup>ie</sup>ll opened  
the door?

A Yes, sir.

Q Why didn't you --

THE COURT: Did you say to open up? What did  
you say? Did you mention a name?

A "Eddie, open up the door."

Q Didn't you testify that you said you are  
federal agents?

A We said we are federal agents.

THE COURT: Carrion said that?

Q Do me a favor, don't say we. I want to know what you personally said. What did you personally say?

A When?

Q When the door was closed, what did you --

THE COURT: Did you yell or --

THE WITNESS: I yelled "We are federal agents, open up the door."

Q Did the door open up?

A Eventually.

Q Did you see somebody?

A Yes.

Q Who?

A Montieill.

Q Did you arrest him at that point?

A No, sir.

Q Why did you enter the premises?

A Because we were going to arrest the two people.

Q Not we, why did you enter the premises?

A To arrest an individual in the apartment.

Q In other words, you were not interested in Mr. Monteill?

A I was interested in whoever I could get --

Q You were --

MR. GOULD: Let him finish his answer.

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THE COURT: Take it easy.

Q Did you arrest Mr. Montiehl?

A No, sir.

Q You were in charge of this operation?

A Yes.

Q Did you say to anybody -- did you direct the people to enter the house?

A Yes, sir, I said we are going in.

Q Did you say, Mr. Montiehl, come out of the house, you are under arrest?

A After I identified myself I said, "Eddie, open up the door."

Q The door was opened, you were at the door, did you say to Mr. Montiehl you are under arrest, step outside?

A No.

Q But you did go inside.

A Yes.

Q Did you pass Mr. Montiehl as you entered?

A Yes, sir.

THE COURT: We are taking a lot of time. You better get to the point, Mr. Cutler.

MR. CUTLER: That's where I'm going.

THE COURT: You can waste two days on a suppression hearing but I won't permit that.

Heyward-cross

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MR. CUTLER: I am trying to keep it as tight  
as possible.

(Continued on next page.)

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Heyward - cross/Cutler

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Q When you passed Mr. Montiehl, -- When you entered the apartment, where did you go from where Mr. Montiehl was standing at the threshold of the door?

A Down the hallway to the back room.

Q Did you see what has happening before you?

A Detective Gunyon and Manthe placed Mr. Montiehl under arrest.

Q Did you actually see that or hear that?

A I saw them taking Mr. Montiehl by the arms, placing him under arrest.

Q In other words, you didn't continue walking past Mr. Montiehl, but you stood there and watched?

MR. GOULD: Objection.

THE COURT: Sustained. Wait a minute. It's very clear what he said. You are rephrasing it, and I think -- Well, go ahead. This is just the sort of thing that is permissible if there was a basis for it. But he stated again and again he walked past Mr. Montiehl and he saw the other two detectives arrest Mr. Montiehl. What difference does it make anyway?

MR. CUTLER: It's very important.

THE COURT: It's not.

Q How far was it from where you eventually wound up at the end of the hallway from where the door is, in con-

nection with this room, or in footage?

A I would say about ten to fifteen feet from what I can remember.

Q You were looking in the direction of the end of the hall, or were you coming back again when you saw it?

A I saw them placing Mr. Montiell under arrest right after we went through the door, as the door was opening.

Q You didn't say that before, you said you were going into the back --

MR. GOULD: Objection, your Honor. Your Honor, that is not my recollection of the testimony.

THE COURT: He said he went past Montiell. Is that what you said?

THE WITNESS: Yes. As they were putting him under arrest, I went past him.

Q They were in front?

A More or less on my side.

Q You all walked through the doorway together?

A I ran through.

Q As you were running through that doorway, you continued ten feet ahead?

A I stopped for a couple of seconds to take a look in the kitchen to see who was there. I saw they had Mr. Montiell, and I went towards the back. That all takes about

1  
2 ten seconds.

3 Q In ten seconds time, Mr. Montiell was taken from  
4 the doorway into the kitchen, and you ran in the back?

5 A The kitchen is off the doorway.

6 Q You ran to the back?

7 A Yes.

8 Q You came back?

9 A Yes.

10 Q Did you direct them to take Montiell into the  
11 car to take him down for booking?

12 A No.

13 Q You continued to search the premises?

14 A Yes.

15 Q Where did you go from the kitchen to?

16 A I went back to the bedroom.

17 Q Where is the bedroom with relation to the door  
18 and kitchen?

19 A Down the hallway.

20 Q You went down the hallway, and came back to the  
21 kitchen, and went back to the hallway?

22 A Yes.

23 Q Was there a door to go into when you got back to  
24 the hallway?

25 A The rooms, I remember, are the bedroom, bathroom,

kitchen, which is part of the livingroom.

Q Exactly when you went back in the hallway, didn't you have to go into another room to get out of the hallway?

A To the right.

Q What room was that?

A The bedroom.

Q How big was the bedroom, approximately?

A Ten by ten.

Q Did you walk around and look under the bed to search the place?

A A quick glance --

Q Did you or didn't you?

A Not at that particular moment.

THE COURT: Did you eventually do it?

THE WITNESS: Yes.

THE COURT: We are wasting a tremendous amount of time. I will give you three more questions. I am not going to keep this up. This could go on to 5:00 o'clock.

Q After you had made the search -- Did you look through all the closets?

A Yes.

Q You eventually took Mr. Montiel out to the Police car?

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A Yes, sir.

Q You showed the Judge a card here, issued by the Government, I presume, which is called Oral Warnings, to be given to a subject prior to an oral interrogation, is that correct?

A Yes, sir.

Q This is covered with a plastic -- a piece of plastic?

A Yes.

THE COURT: Isn't that wasting time? Who cares if it's covered with a piece of plastic. You can never convince me that that is relevant.

Q Is there any writing on that paper?

THE COURT: What paper?

Q Other than the printed matter, is there any writing?

MR. GOULD: There is no testimony that was the exact same card. He said that was a form.

MR. CUTLER: He said that is the card that he used.

THE COURT: Wait a minute.

MR. CUTLER: Why would it be introduced into evidence?

THE COURT: What was your testimony? This is the

particular card you had with you?

THE WITNESS: I got this out of my wallet.

THE COURT: It's not necessarily the card that you had at that time?

THE WITNESS: Exactly.

MR. GOULD: I introduced the form.

THE COURT: He didn't say that is the card.

Q Do you have the card you had that night?

A No, sir.

Q Did you make any notation that night concerning the questions and answers that you got from the defendant?

THE COURT: He didn't make any writing. He doesn't have to. Where are we going with this, Mr. Cutler?

Did you read that to him?

THE WITNESS: Yes.

THE COURT: What notations can he make?

MR. CUTLER: He could put down next to each question --

THE COURT: There is no requirement for that.

Did you hear him answer each question?

THE WITNESS: Yes.

THE COURT: What did he say?

THE WITNESS: He understood.

Q Did you see any of the Police Officers beat or hit the defendant?

A No.

THE COURT: Are you claiming he was hit?

MR. CUTLER: He was beaten, Judge.

THE COURT: Mr. Cutler. I will take a bonafide defense, but I won't take -- Well, I will leave it to the jury. A fabricated defense will be looked upon with great --

MR. CUTLER: Of course, your Honor.

THE COURT: Have you ever made a claim that this man was beaten before?

MR. CUTLER: No.

THE COURT: Is this the first time?

MR. CUTLER: We are not making the claim.

THE COURT: You are not going to do that before the jury. You and I are going to have a good time here.

MR. CUTLER: We will listen to the defendant.

THE COURT: Can we do that now, or after lunch?

MR. CUTLER: After lunch.

MR. GOULD: I have no further questions.

THE COURT: About an hour. Is that all right, Gentlemen?

MR. GOULD: Yes. Can we assume we will pick a

1 jury?

2 THE COURT: Yes. And we won't start until tomor-  
3 row.

4 (A recess was taken at this time until 2:40 P.M.  
5 this afternoon.)

End of AM

7 (continued on next page.)  
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11 THIS APPENDIX OMITTS DEFENDANT'S TESTIMONY  
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1 MR. GOULD: I have Detective Manthe who I  
2 believe is the person referred to.

3 THE COURT: He is a 200 pound man?

4 Is this the man that jumped on you?

5 MR. GOULD: That is not Mr. Manthe. Mr. Manthe  
6 is in the witness room I believe.

7 THE COURT: Bring him in.

8 MR. GOULD: I do not want to put him on.  
9 I think they are absurd charges. I am not going to  
10 put him on.

11 MR. CUTLER: For the edification of the Court --

12 THE COURT: I have had enough edification  
13 already, I do not need it.

14 MR. CUTLER: This is very serious, I am serious  
15 about it. I would like to know if there are any  
16 records at the Department of Justice or the House  
17 of Detention where a telephone call could be made to  
18 find out if there are records in existence.

19 THE COURT: What kind of records?

20 MR. CUTLER: Medical examination.

21 THE COURT: I will ask him to do that for you.  
22 Bring in any medical records you have.

23 MR. CUTLER: Any physical examination.

24 THE COURT: Do you have any physical examinations,  
25 records of that?

1 MR. GOULD: I do not have any.

2 THE COURT: Does Mr. Haywood know whether  
3 you had a physical examination taken of this man?

4 I want you to please keep quiet. Was a  
5 physical examination taken of this defendant when he  
6 got back to 57th Street Headquarters?

7 MR. HAYWOOD: No, sir, not at 57th Street,  
8 no, sir.

9 The defendant advised me the following morning  
10 when I was bringing him to the arraignment. He went  
11 to see a doctor but he did not say for what.

12 THE COURT: Did you ever examine into it?

13 MR. HAYWOOD: No, sir.

14 THE COURT: Did any Government representative  
15 ever examine him?

16 MR. HAYWOOD: Not that I know of.

17 THE COURT: You will have to take him aside if  
18 he does that while the jury is here as there is going  
19 to be immediate trouble. He cannot put his head up  
20 and down and talk, I do not care what the answer is.  
21 He is in a Federal Court and he does not know how to  
22 conduct himself and if he does not I will have to take  
23 steps. He is going to keep quiet and not make any  
24 faces and move his head up or down or sideways and  
25 that goes for everybody else.

1 MR. CUTLER: I want to apologize, he is very  
2 emotional, he is a Latin.

3 THE COURT: I have had a lot of Latins,  
4 Mr. Cutler.

5 MR. CUTLER: He is very emotional.

6 THE COURT: In 16 years you must understand  
7 that there have been other Latins before me many times  
8 and we have to be controlled.

9 I want to know Mr. Haywood, was this man ever  
10 examined by any medical authorities representing the  
11 Government?

12 MR. HAYWOOD: I was told by the defendant,  
13 Your Honor, that he asked to see a doctor at West  
14 Street where he was overnight.

15 THE COURT: Did he see one?

16 MR. HAYWOOD: I do not know.

17 THE COURT: Can you find out? Have you any  
18 records at West Street? He was at West Street?

19 MR. HAYWOOD: Yes, sir.

20 THE COURT: The records will show if he was  
21 examined and the result of that examination, would  
22 it not?

23 MR. HAYWOOD: I do not know, Your Honor.

24 THE COURT: Would you call up West Street  
25 and find out whether he was examined and bring the

1 records of the examination here.

2 MR. CUTLER: All personal records of the  
3 defendant at the place. It may not be by a doctor,  
4 it may be by an ancillary service like a male nurse.

5 THE COURT: Anything, anything medical, yes,  
6 they understand that, any health examination, whether  
7 it was by a doctor or nurse or male nurse or whatever  
8 it is. Do that right away, so I will have it here  
9 tomorrow morning.

10 MR. HAYWOOD: Yes, Your Honor.

11 MR. GOULD: You wanted to see if this is the  
12 person.

13 THE COURT: Are you going to put him on the  
14 stand or not?

15 MR. GOULD: Yes, Your Honor.

16 THE COURT: Put him on the stand.

17 D E T E C T I V E G E O R G E M A N T H E , Shield 569,  
18 Suffolk County Police Department assigned to the  
19 Long Island Drug Enforcement Task Force, having been  
20 first duly sworn, took the witness stand and  
21 testified as follows:

22 MR. GOULD: May I excuse Agent Haywood to  
23 make that phone call?

24 THE COURT: Yes, do that right away.  
25

1  
2 DIRECT EXAMINATION

3 BY MR. GOULD:

4 Q By whom are you employed?

5 A Suffolk County Police Department.

6 Q How long have you been so employed?

7 A 7 years.

8 Q Do you work with the Drug Task Force, Long  
9 Island Drug Task Force?

10 A Yes.

11 Q Were you so employed September 29, 1974?

12 A Yes, sir.

13 Q Did there come a time on that date when you  
14 entered the apartment of one Eduardo Montiel?

15 A Yes.

16 Q Do you see Mr. Montiel here today?

17 A Yes, I do.

18 Q Will you point him out.

19 A He is seated at defense table.

20 Q Which one?

21 A The dark haired gentleman.

22 MR. GOULD: May the record reflect that he  
23 identified the defendant.24 Q Could you tell us what you were doing there  
25 that day?

1  
2 A I was assisting Detective Carrion, young and  
3 Special Agent Haywood in an undercover transaction.

4 Q Did there come a time when you went up to the  
5 door of this apartment?

6 A Yes.

7 Q Can you tell us what happened from that time  
8 on?

9 A We attempted to open the door. There was a  
10 steel door, solid steel with a steel frame or metal and we  
11 couldn't open it. The defendant from inside -- we were  
12 showing badges through the peephole and he was advised that --

13 THE COURT: Wait a minute, did he open the door?

14 THE WITNESS: Yes he did open the door.

15 THE COURT: When he opened the door what  
16 happened?

17 THE WITNESS: Detective Gunyan and myself.  
18 We took the defendant and advised him that he was  
19 under arrest.

20 THE COURT: You showed him your shield.

21 THE WITNESS: Yes, sir, we had our shields  
22 out and advised him he was under arrest and told him  
23 to get down, at which time --

24 THE COURT: Get down?

25 THE WITNESS: Well, we usually try to immobilize

1  
2 a prisoner by lying him down.

3 THE COURT: By lying him down?

4 THE WITNESS: Yes, that is right, and he refused  
5 to be handcuffed and a small struggle ensued and at  
6 which time he was handcuffed.

7 Q Can you describe the small struggle, please?

8 A It was no punching. It was flailing on the  
9 part of the defendant and refusing to be handcuffed or placed  
10 down on the floor.

11 Q Did you ever jump on his back.

12 A Absolutely not.

13 THE COURT: Were you there when Mr. Haywood  
14 entered?

15 THE WITNESS: Yes, sir.

16 THE COURT: Who else entered with you?

17 THE WITNESS: Detective Carrion, Agent Haywood,  
18 Detective Gunyan and myself. I am just trying to  
19 think who was there now, because there were several  
20 agents, officers, in and out at various times.

21 THE COURT: How many all told were there?  
22 Were you there the whole time?

23 THE WITNESS: No, sir, not all the time.

24 Q Were you in the apartment all the time?

25 A I went outside a couple of times to check the

1  
2 outside window. I was looking for footprints or anything  
3 outside.

4 THE COURT: Did you know how many people were  
5 there during the entire time?

6 THE WITNESS: I suppose there were about 8.

7 THE COURT: 8? There were not 12?

8 THE WITNESS: It is possible, sir. I would  
9 have to look at the report to be honest with you.

10 THE COURT: Have you got a report to refresh  
11 your recollection?

12 THE WITNESS: Yes, sir.

13 Q Do you have a report?

14 A No, sir.

15 THE COURT: You do have one?

16 THE WITNESS: Yes.

17 THE COURT: You do not have it with you, is  
18 that what you are saying?

19 THE WITNESS: No, sir.

20 THE COURT: Did you see anyone pull a gun and  
21 place it at the defendant's mouth?

22 THE WITNESS: No, sir.

23 THE COURT: Did you jump on the defendant's  
24 back?

25 THE WITNESS: No, sir.

1  
2 THE COURT: Did you see anyone jump on the  
3 defendant's back?

4 THE WITNESS: No, sir, I did not.

5 THE COURT: Did you see any of the agents walk  
6 over the defendant?

7 THE WITNESS: No, sir.

8 THE COURT: Did you see any agents hit the  
9 defendant?

10 THE WITNESS: No, sir.

11 THE COURT: What was this wrestling, what kind  
12 of wrestling was it?

13 THE WITNESS: We were trying to place him in  
14 handcuffs and he did not want to be placed in handcuffs.

15 THE COURT: You put him finally in handcuffs?

16 THE WITNESS: That is right.

17 THE COURT: How did you put him on the ground?

18 THE WITNESS: We laid him down, forced him  
19 on the ground.

20 THE COURT: How many of you did that?

21 THE WITNESS: Two of us.

22 THE COURT: You just picked him off his feet  
23 and put him on the floor?

24 THE WITNESS: Yes, sir.

25 THE COURT: Did you see men coming in and

smacking him in the face?

THE WITNESS: No, sir.

THE COURT: Were you there all the time?

THE WITNESS: I was there all the time.

THE COURT: Did you see him when he was in a different position other than lying on the floor?

THE WITNESS: Yes, sir, he was sitting up in the room.

THE COURT: Did you see someone smack him then?

THE WITNESS: No, sir, I did not.

THE COURT: Did you see someone smack him every time he wanted to talk?

THE WITNESS: No, sir.

THE COURT: Did you see anyone smack him at any time?

THE WITNESS: No, sir, I did not.

THE COURT: You were there?

THE WITNESS: Well I was there most of the time.

THE COURT: Did you see any of his teeth come out of his mouth?

THE WITNESS: No.

BY MR. GOULD:

Q You had your gun drawn when you entered the room?

A Yes.

Q Did you see anybody stick their gun in the mouth of the defendant?

A No, sir.

THE COURT: Or against his body in anyway?

THE WITNESS: I might have, against his chest when I came in.

THE COURT: Did anyone have a gun drawn besides you?

THE WITNESS: I know Detective Gunyan and myself both had our guns drawn. I wouldn't go into an apartment without my gun drawn. It would be kind of suicidal.

THE COURT: Did you see anyone else besides yourself?

THE WITNESS: I could not recall, I could not testify.

THE COURT: You did say you saw Gunyan with his gun drawn?

THE WITNESS: Yes, sir. We both had our guns out.

THE COURT: You did see him come in with a gun out?

THE WITNESS: Yes, sir. Detective Gunyan and myself, I am sure had our guns out.

1  
2 THE COURT: Nobody else? You do not know if  
3 anybody else did?

4 THE WITNESS: I assume everyone had their  
5 weapons out.

6 THE COURT: You assume -- I am not interested  
7 in assumptions. I have to know only what you saw  
8 happened.

9 THE WITNESS: I could not testify to that.

10 THE COURT: All right, proceed.

11 MR. GOULD: I have no further questions.

12 THE COURT: How many pounds do you weigh,  
13 approximately?

14 THE WITNESS: 210.

15 THE COURT: Mr. Montiehl, is this the man you  
16 say jumped on your back?

17 DEFENDANT MONTIELL: Yes.

18 THE COURT: Did you jump on his back?

19 THE WITNESS: No, sir, absolutely not.

20 BY MR. GOULD:

21 Q What kind of shoes were you wearing that day?

22 A I do not recall.

23 THE COURT: All right.

24 CROSS EXAMINATION

25 BY MR. CUTLER:

1  
2 Q Officer Manthe, how long have you been a  
3 narcotics detective?

4 A Four and one half years.

5 Q You are from the Nassau County Police?

6 A Suffolk County, yes sir.

7 Q You have been for 4-1/2 years in the narcotics  
8 squad?

9 A Yes, sir.

10 Q How long in the Strike Force?

11 A I believe it is almost a year.

12 Q Have you ever heard of a policeman beating  
13 a defendant?

14 MR. GOULD: Objection, Your Honor.

15 THE COURT: Sustained. We are not going to  
16 have any of that. I don't care whether he heard it  
17 or not.

18 Q Did you ever see it?

19 A No, sir.

20 THE COURT: See what? That is absolutely  
21 objectionable. You know better than that, whether  
22 he saw or heard. I am talking about what this man  
23 did in this case.

24 Did you see anyone beat -- any policeman beat  
25 this man?

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THE WITNESS: No, sir, I did not.

Q- Did you tell the Judge you have records of this case?

THE COURT: He has notes.

THE WITNESS: No, I do not have notes, I have a case report that was written by Agent Haywood, I believe.

Q And you have absolutely no notes concerning this case?

A Absolutely none. I did have very little to do with the case.

Q Well you were the first one in, weren't you?

A No, I was not.

Q Who was the first one in?

A I do not know who was in first. There were four or five of us at the door.

THE COURT: Where is Haywood?

MR. GOULD: He is making a phone call.

THE COURT: Maybe Haywood has a record of this case.

THE WITNESS: We have a case report, Your Honor, that is the only one I have.

THE COURT: There is a case report? That is what we are talking about.

1  
2 MR. CUTLER: While he is getting the case  
3 report, can I ask about something else?

4 THE COURT: Yes.

5 Q Officer, you are testifying under oath as to  
6 your recollection of this event?

7 A Yes, sir.

8 Q Do you have a recollection of the event?

9 A Yes, sir.

10 Q Do you or do you not remember who walked into  
11 that house first?

12 A I know there was Agent Haywood.

13 Q That is not the question. Do you remember?

14 A No, sir.

15 Q You do not?

16 A Not exactly.

17 Q Do you remember if anybody told this defendant  
18 that he was under arrest?

19 A Sure, I did.

20 Q And did you put him under arrest?

21 A Yes, sir.

22 Q- Did you book him?

23 A No, I didn't.

24 Q- But you are the one who arrested him, isn't  
25 that a fact?

1  
2 THE COURT: He does not have to do the booking  
3 if he arrest him, his colleague can book him, anyone  
4 can.

5 THE WITNESS: What happened is, when we went  
6 into the door, in what particular order I do not  
7 recall, when we went in the door, the defendant was --  
8 well, the defendant was standing on one side and  
9 Detective Gunyan and myself grabbed him first.  
10 Whoever else came into the apartment ran through the  
11 apartment to secure it, to check to see where the  
12 other defendant was.

13 THE COURT: But you never found the other  
14 defendant?

15 THE WITNESS: No, sir.

16 Q How long did it take you to find out that there  
17 was no one else in the apartment other than Eduardo Montiehl,  
18 approximately?

19 A A few minutes, I suppose.

20 Q- How long did you stay there?

21 A I do not recall, I would have to look at the  
22 report.

23 Q Would you say from your recollection, a few  
24 minutes?

25 A Yes.

1  
2 Q A half hour?  
3 A Perhaps a half hour.  
4 Q An hour, two hours?  
5 THE COURT: Any more than a half hour?  
6 THE WITNESS: I do not know.  
7 THE COURT: Any more than an hour?  
8 THE WITNESS: I do not think so but I am just --  
9 THE COURT: I am talking about you personally,  
10 how long were you there all told?  
11 THE WITNESS: I would say half an hour or so.  
12 THE COURT: Were you there four hours?  
13 THE WITNESS: No.  
14 THE COURT: Three hours?  
15 THE WITNESS: No, sir.  
16 THE COURT: Two hours?  
17 THE WITNESS: No, sir, I do not believe so.  
18 Q Do you remember going to the Drug headquarters  
19 at the time Montiell was taken there?  
20 A No, I was not there. I went home after.  
21 Q Did you notice that Montiell had excretion  
22 in his pants?  
23 A Yes, sir.  
24 Q That was as soon as you entered the place?  
25 A I assume so, yes, sir.

1  
2 Q Did you notice anything, did you make any  
3 effort to look at his face and see if anything was wrong  
4 with his face?

5 A No, sir.

6 Q Did you have a conversation with him?

7 A Yes, sir.

8 Q Did he have a complaint about his teeth being  
9 knocked out?

10 A None at all.

11 MR. CUTLER: May I look at the report?

12 THE COURT: Well, all right.

13 MR. CUTLER: How long he was there, it may  
14 indicate how long he was there. Can I have a minute  
15 to look at this?

16 THE COURT: Sure, take your time.

17 Q Officer, I show you the report of the  
18 investigation and if you will peruse that and under  
19 paragraph 10, there is a list of the names of additional  
20 policemen at the scene. Would that refresh your recollection  
21 as to the amount of policemen at that raid?

22 A Yes, sir.

23 THE COURT: The number.

24 Q According to that report and from your  
25 recollection, how many would you say there were?

1  
2 A Ten I believe.

3 THE COURT: Ten all told?

4 THE WITNESS: Yes, sir.

5 THE COURT: Does that include the writer of  
6 the report?

7 THE WITNESS: Yes, sir.

8 THE COURT: It was 10.

9 Q And did you have anything else to do with  
10 this case other than what you testified to?

11 A I found some white powder in the bathroom.

12 Q Other than that, did you have anything else  
13 to do with the case?

14 A Other than that, what we did?

15 Q What you testified to?

16 A No, that was it.

17 Q You entered the place and told him he was  
18 under arrest and found the cocaine in the bathroom as you  
19 claim and that was all you had to do with this case, is  
20 that right?

21 A Yes, sir. I walked outside, checked outside,  
22 and I asked one of the neighbors if she had seen anyone  
23 coming out. She described one of the other agents that  
24 had just been out there.

25 THE COURT: That was the wrong man.

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THE WITNESS: Right, yes, sir.

Q Did you know that every apartment in the house was searched in the building?

A No, sir.

Q You did not participate in that?

A No, sir.

MR. GOULD: Objection, there is no evidence that happened.

MR. CUTLER: I asked him if he knew, I did not say --

MR. GOULD: He said did he participate.

MR. CUTLER: I said do you know that other apartments in the building --

THE WITNESS: I am sorry.

MR. CUTLER: I did not say he did it. I asked if he knew it was done. It is ambiguous.

THE COURT: It is a little more than that. It will not be done before a jury, because if it is, there is going to be trouble because it is like asking when did you stop beating your wife. That assumes you were beating your wife. You know different. This case is going to be tried and you had better believe it down the middle and I am not going to have questions like that which are ambiguous and might be

1  
2 misleading to the jury. Now if you know the whole  
3 building was searched, that is one thing. But you  
4 see, you leave it to the jury feeling that perhaps  
5 the whole apartment house was searched, but you are  
6 not going to do that.

7 MR. CUTLER: I am going to bring in all those  
8 witnesses, Judge. If it is possible I am going to  
9 bring in the witnesses to prove --

10 THE COURT: You can bring anybody you wish  
11 and you may try the case anyway you want, but I am  
12 going to insist it be tried fairly and squarely.

13 MR. CUTLER: There is no question about that.

14 THE COURT: You can bring the whole apartment  
15 building down if you wish but I am not going to have  
16 that sort of thing done.

17 MR. CUTLER: I want you to know I ask the  
18 question in good faith on the basis of the information  
19 I have.

20 THE COURT: Information, not evidence.

21 MR. CUTLER: I changed it fast.

22 THE COURT: Well, I want to tell you, Mr. Cutler,  
23 you have been before me and I have enjoyed having you  
24 before me, but it is going to be tried fairly and  
25 squarely. I will not have the Government and I will

1  
2 not have you asking obviously irrelevant questions,  
3 or misleading questions, none of that. That is out  
4 in this Court.

5 Is there anything further?

6 MR. GOULD: I have no further questions.

7 THE COURT: You may step down.

8 What is the evidence you want to suppress,  
9 Mr. Cutler?

10 MR. CUTLER: I want to suppress the statements  
11 that were allegedly made by my client before he was  
12 given his rights at the Narcotics Detention Headquarters  
13 on the grounds even if he were told his constitutional  
14 rights and his Miranda warnings, they were obtained  
15 as a result of force and duress, although I do not  
16 admit, Judge, even for argumentation, that he ever  
17 was given these rights.

18 THE COURT: You do not have to admit it.  
19 It is a question of who I am going to believe.

20 After listening to the defendant, I am going  
21 to believe the agent and I am going to permit it to  
22 come in.

23 MR. CUTLER: Don't you want to wait until we  
24 get those medical records from the House of Detention?

25 THE COURT: No. If I get the records, I will

1  
2 then permit you to renew your application, but in the  
3 meantime I think we had better leave it as it is,  
4 because I have listened to Mr. Haywood and I have  
5 listened to Mr. Manthe and to the defendant, and I  
6 think on the balance, I am more apt to believe  
7 Mr. Haywood. He said he gave the defendant his  
8 rights before he asked him any questions. He gave him  
9 his rights as I understand it in the automobile.  
10 He denies that. Of course, he denies he knows  
11 Mr. Carrion and there again there is a conflict in  
12 the testimony. You have this disagreement down the  
13 line between this man and the agents and I have looked  
14 at it and I am believing the agents and I will permit  
15 it to come in.

16 MR. GOULD: May I excuse the agents, not  
17 Mr. Haywood, but the other agents?

18 MR. CUTLER: What about the question of the  
19 illegal search outside of the purview --

20 THE COURT: I think it is Coolidge, the name  
21 of the case you are talking about and that only  
22 refers to a case where the search is instant to the  
23 arrest. Here the search was on its own because they  
24 had reason to believe that heroin was in the apartment.

25 MR. CUTLER: Cocaine.

1  
2 THE COURT: Cocaine. They could have done  
3 that even if they did not arrest the man.

4 MR. CUTLER: I thought under the Shimmel  
5 case that the agents really should not make a general  
6 search at the time of the arrest.

7 MR. GOULD: Your Honor, Shimmel said except  
8 for exigent circumstances and pointed to the danger  
9 of evidence being destroyed or another person being  
10 around because of danger to the agents. Here the  
11 testimony was clear that there was a lot of danger  
12 and there was another person. You heard Agent Manthe  
13 testify in these drug cases there is always a chance  
14 of violence. There was one person on the loose and  
15 they did not know where he was and they heard flushing,  
16 evidence being destroyed, and they felt clearly  
17 exigent circumstances here.

18 THE COURT: I also thought there was a basis  
19 because they had already been inside the apartment  
20 and they already had 14 ounces of cocaine if what  
21 they say is true in possession. It was only Flip  
22 and Carrion --

23 MR. GOULD: Flip was not there on the 20th,  
24 just Agent Carrion. He went in the day before.

25 THE COURT: Carrion went in by himself?

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2 MR. GOULD: Yes, Your Honor, and have seen  
3 it in plain view.

4 MR. CUTLER: Allegedly.

5 THE COURT: Yes, allegedly, but the jury is  
6 going to believe it was inherently probably, I think.  
7 Let me ask you this. If Montiehl had left and you  
8 had reason to believe there was contraband in that  
9 apartment, I think you could come in on that without  
10 a search warrant.

11 MR. GOULD: Certainly.

12 MR. CUTLER: But, Judge, isn't it --

13 THE COURT: Let me ask you this. Well, it  
14 may be open to question whether you could come in  
15 without a warrant because he had plenty of time to  
16 get a warrant.

17 MR. CUTLER: Exactly.

18 THE COURT: But that would be a question.  
19 You are right, Mr. Cutler, if you had time to get a  
20 warrant, there would have been probably cause to get  
21 the warrant to issue.

22 MR. GOULD: I do not argue that at all, except  
23 in the hypothesis you just posed, if in fact the  
24 defendant was on the loose and they did not have  
25 enough men to keep watch on the apartment and he could

1  
2 get in there and destroy it, that would be another  
3 case. But in the case at Bar, the one we are concerned  
4 with here, there were what the Court refers to as  
5 exigent circumstances, no two ways about it, in the  
6 two classic cases, the destruction of evidence and  
7 danger to the agents.

8 THE COURT: Was there testimony by Carrion?  
9 When he went there he saw a gun before he came out.

10 MR. GOULD: No, Your Honor, the testimony of  
11 Agent Manthe when asked --

12 THE COURT: No, I am talking about Carrion.

13 MR. GOULD: No, Carrion, there was no testimony  
14 he saw a gun.

15 MR. CUTLER: May I get one word in edgewise?

16 THE COURT: You can get it in straightwise.  
17 Are you finished?

18 MR. GOULD: I was going to add in these times  
19 of cases where someone is selling drugs, these  
20 experienced agents, where there is always a danger  
21 and there was testimony that they were looking for  
22 the other guy and that is what they were worried about,  
23 they went looking for the other fellow and there was  
24 testimony that they had heard flushing and running  
25 water and they thought the drugs were being destroyed,

1  
2 and they saw his wife come in and she was not arrested  
3 and she could have destroyed things also. Those are  
4 the two classic cases when there are exigent circum-  
5 stances. There are a whole line of cases and it is  
6 hot pursuit in effect, when there is no time.

7 MR. CUTLER: If I may directly this entire  
8 thought process.

9 As a former member of the Constabulary, I have  
10 the deepest and highest respect for fleet police  
11 officers.

12 THE COURT: I did not know you were a former  
13 member.

14 MR. CUTLER: Yes, I spent six years with  
15 the City. I have the highest regard and respect for  
16 them. However, the constitution goes above exigencies  
17 except for their own personal protection. They had  
18 10 police officers there, Your Honor, all qualified  
19 men. They had one window or a few windows or one door  
20 to guard. There is no reason other than the possibility  
21 that exists in every narcotics case, that it can be  
22 flushed down the basement, Judge. If we are going to  
23 allow that reason to be permitted, then every home in  
24 this country can be available for police search on the  
25 basis of the suspicion that the evidence --

1  
2 THE COURT: That is not exactly how the  
3 testimony went. Your argument falls flat because  
4 you cannot come in everytime you might suspect the  
5 evidence is going to be put down the toilet bowl.  
6 However, you can come in when you are standing out  
7 there and rapping on the door and you hear flushing.  
8 That then gives a different context, a different color  
9 to the action. That is why they tried to break in  
10 and there has been a conflict of testimony here that  
11 where he says the door was about to come off the hinge.

12 MR. CUTLER: That is right.

13 THE COURT: That means he must have heard it  
14 for quite a while if they almost kicked it off the  
15 hinge and also indicates he had a lot of time to move  
16 around and Alvaro.

17 MR. GOULD You mean the missing person who  
18 got away?

19 MR. CUTLER: The alleged other person.

20 THE COURT: I am going to take the testimony  
21 from both sides. I am not going to say your testimony  
22 is right and yours is not.

23 You have two witnesses who disagreed with  
24 your client completely and don't you think it is most  
25 unusual for 11 men to jump on this man and a 200 pound

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2 man to jump twice on his back? His back would have  
3 been broken. What are we talking about. This is  
4 no fairy land or Disneyland either.

5 MR. CUTLER: The way it comes out, he is not  
6 an elocutionist, the way it comes out from my client,  
7 it may be a little different.

8 THE COURT: I would say there is a certain  
9 element of exaggeration.

10 MR. CUTLER: No doubt, there is no doubt a  
11 person who has been injured that way would exaggerate.

12 THE COURT: He would not have been here maybe.

13 MR. CUTLER: However, if there is any element  
14 of truth to it, it is an unfortunate incident.

15 THE COURT: What would be the necessity for  
16 it? You see one of these men could have taken care  
17 of it.

18 MR. CUTLER: I do not want to be in a position  
19 of judging their conduct, Judge, that is not my forte,  
20 because I am only a paid advocate.

21 THE COURT: You are a policeman, do you need  
22 11 men to jump on, one of them a 200 pound man, to  
23 jump on a man who is perhaps 170 if he is that, and  
24 slap him around and take his teeth out and put a  
25 gun right in the mouth?

1  
2 MR. CUTLER: We who are civilized say society  
3 is judged by the way the lepers of our society are  
4 treated. We know there is a lot of hostility to  
5 people allegedly involved in this type of situation,  
6 Judge, and I can understand the anxieties and pressures  
7 on all parties. That is all. I have said enough.

8 THE COURT: I do not know why you need 11 men  
9 or 10 men, why you would need that many there,  
10 Mr. Gould.

11 MR. GOULD: They have surveyance teams.  
12 In a recent case, I believe a year and one half ago,  
13 an agent was killed from the D.E.A. in a situation  
14 where the surveyance could not get in close enough.  
15 They do not take chances with drug cases with the  
16 charges facing these people, particularly in the  
17 States where they have nothing to lose by going for  
18 broke.

19 MR. CUTLER: Let me answer it, I will give you  
20 the answer.

21 THE COURT: Y-ou can give me the answer but  
22 do not do it in that manner if the jury is here.

23 MR. CUTLER: The answer is not they are afraid  
24 that someone will get hurt, but that the police  
25 operators cannot trust the members of the Constabulary

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2 with \$14,000 and they need plenty of policemen around  
3 to watch each other. That is the reason there are  
4 so many men.

5 THE COURT: That is from experience.

6 MR. CUTLER: Not in the past, there were no  
7 drugs in those days.

8 THE COURT: There was still a lot of money in  
9 those days floating around.

10 MR. CUTLER: 30 years ago there was not a lot  
11 of money either.

12 THE COURT: We will get a jury up here.

13 (At this point the jury talisman entered the  
14 courtroom.)

15 THE COURT: Ladies and Gentlemen, this is a  
16 criminal case in which the U.S. Government has charged  
17 Edward Montiehl, who is the defendant, with violating  
18 the narcotics laws.

19 (At this point, the Court read the indictment  
20 and began to question the prospective jurors.)

21 \* \* \*

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25

TRIAL -  
HEYWOOD - DIRECT

132

Q When you say we, do you mean Detective Carrion and yourself?

A Detective Carrion and Detective Manthe (Phonetic).

Q Was there anyone else there besides yourself And Detective Carrion and Detective Manthe?

A Detective Gunyon (phonetic).

THE COURT: Very well.

Q Did you subsequently kick the door down?

A No sir.

Q How long did you stay outside?

A About five minutes.

Q Did you ever gain entrance to the apartment?

A Yes sir.

Q How did that occur?

A Mr. Monticelli opened up the door.

Q Then what happened?

A Detective Manthe and Gunyon placed Mr. Monticelli under arrest and I quickly went into the kitchen to see if there was any cocaine around?

Q You went into the kitchen?

A Yes sir.

Q Did you go into any other part of the apartment?

A Yes sir.

# TRIAL

Carrion-direct

51 133

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THE WITNESS: Yes.

THE COURT: You don't need any more than that.

Q May I just ask in your undercover years, have you made any buys of cocaine?

A Yes, sir.

Q Approximately how many?

A Approximately 50.

Q And are you familiar with the various street tests that are used by people buying and selling cocaine illegally to test the purity of the drug and to find out what type of drug it is?

A Yes, sir.

Q Can you briefly describe these tests to us?

THE COURT: These are called on-the-street-tests?

THE WITNESS: Yes.

THE COURT: That's perfectly proper, Mr. Cutler. And you have made them yourself and you have been instructed how to make them?

THE WITNESS: Yes, sir.

Q Briefly describe those tests.

A By tasting the suspected drug, smelling it, burning a portion of it on tin foil paper.

Q What does that prove?

TRIAL

Carrion-direct

52 134

1

2

A It shows that the drug hasn't been diluted too

3

much.

4

Q Go ahead.

5

A By dropping some in some alcohol.

6

Q Do you speak any language other than English?

7

A Yes.

8

Q What language is that?

9

A Spanish.

10

Q How long have you spoken that?

11

A All my life.

12

Q You say you're fluent in Spanish?

13

A Yes.

14

Q I direct your attention to September of 1974,

15

did there come a time when you met a person named Eduardo

16

Montiell?

17

A Yes, sir.

18

Q Do you see that person here today?

19

A Yes, I do.

20

Q Point him out.

21

A (Pointing.)

22

THE COURT: In the dark suit not the light suit?

23

THE WITNESS: Dark suit with a moustache.

24

MR. GOULD: May the record reflect --

25

MR. CUTLER: I object to the courtroom

1

2

Q What did you do?

3

A I opened the clear plastic bag and took a whiff

4

of it.

5

Q Did you have an odor?

6

A Yes.

7

Q From your experience what did it smell like?

8

A Cocaine.

9

Q What did you do?

10

A I asked Monteill if he had a scale to weigh the  
package on. He said, "Yes."

12

He walked towards a refrigerator, and a cabinet is next  
to the refrigerator. He removed a small postal scale. While  
he was doing this I asked him if he had any tin foil paper,  
aluminum paper, he said, "Yes."

16

He placed a scale on a counter next to the refrigerator,  
opened the drawer and removed a package of tin foil wrap.  
He came back to the table and handed me a package of tin foil  
wrap. I opened it up and took a corner, ripped off a corner  
piece off the roll. I put a small quantity of the white  
crystal substance --

22

Q Where did you get that white crystalline sub-  
stance from?

23

24

A From the clear plastic bag, and Edward Monteill  
lit a match.

25

TRIAL  
Carrion-direct

25 136

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Q Did you light the match?

3

A I did not.

4

THE COURT: Who lit the match?

5

THE WITNESS: Edward Monteill.

6

Q What did he do with the match?

7

A Held it under the tin foil paper.

8

Q What happened?

9

A The white crystal substance evaporated.

10

Q What did this purport to show?

11

A It showed that the substance had been diluted

12

too much with starch or other dilutants.

13

Q What substance are you talking about?

14

A The white substance I had placed on the cocaine.

15

Q Then what happened?

16

A I rolled up the tin foil paper and placed it in

17

the ashtray and walked over to the scale. I placed the

18

package on the scale.

19

Q Mr. Carrion, at this point I would like to show

20

you Government's in Evidence No. 1, can you identify what that

21

is?

22

A A piece of tin foil paper.

23

Q Have you ever seen that paper before?

24

A I couldn't say it was the same paper.

25

Q Was it about the same size?

TRIAL

Carrion-direct

137

80

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2  
3 A I started to go back into the apartment and  
4 Agent Heyward followed me in.

5 Q Followed you in where?

6 A Into the hallway.

7 Q There was a hallway in front of the apartment?

8 A Yes, sir.

9 Q And then what happened?

10 A I knocked on the door and got no response.  
11 It's a large metal door, knocked on the door, got no response  
12 and knocked again. Then I heard what appeared to be the  
13 toilet being flushed. At this time, Agent Heyward banged on  
14 the door, said open up, we are Federal Agents, still no  
15 response.

16 Q How did he bang on the door, with his hands,  
17 with his feet?

18 A With his hands and his fist; and I attempted to  
19 kick down the door. I kicked about two or three times, I  
20 couldn't do it. About this time, Detective Gunnion (phonetic)  
21 and Detective Manthe joined us.

22 Q Who is that?

23 A Two of the surveilling team.

24 Q Did you have your gun drawn at this time?

25 A Yes, we did; and Detective Manthe tried to  
kick the door open also.

1  
2  
3 THE COURT: At that time there was just the  
4 four of you?

5 THE WITNESS: Yes.

6 THE COURT: You didn't see anyone else in the  
7 hall at that time?

8 THE WITNESS: Correct.

9 THE COURT: At that point, there was only four  
10 agents?

11 THE WITNESS: Yes.

12 Q Did you succeed in kicking the door down?

13 A No, Manthe was not successful.

14 Q Did you eventually gain entrance to the apart-  
15 ment?

16 A Yes, sir, approximately 4 or 5 minutes elapsed  
17 before Eduardo Montiehl opened the door for us.

18 Q What happened then?

19 A As soon as he opened the door for us we rushed  
20 in, Detective Gunnion and Manthe placed him under arrest.

21 THE COURT: Who placed him under arrest?

22 THE WITNESS: Gunnion and Manthe.

23 Q Did you see that happen, Gunnion and Manthe  
24 place him under arrest?

25 A Yes.

Q Describe what happened when they placed him

LeG/LH  
Reel 4

1

### Charge of the Court

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THE COURT: Well, ladies and gentlemen, you have listened most attentively to the testimony and to the summations. The testimony presented the facts through witnesses and exhibits. The summations presented the arguments of the attorneys, pro and con, concerning those facts.

The time has come for you and me to perform our respective functions in the trial of the case. You have been very patient. You have heard the voices of the attorneys and the Court and now your voice will be heard.

At the outset I wish to take this opportunity to express my appreciation for your attentiveness and alertness during the trial and to express my appreciation also for the sacrifice each and every one of you made in neglecting your business and your personal affairs to see that the ends of justice might be accomplished in this case. You have been most tolerant also for some of the unavoidable delays.

Every criminal prosecution is important to the Government of the United States, and it is equally important to the defendant on trial. Each is entitled to equal justice at your hands.

From my experience, justice is best spent in

1  
2 calm, patient, careful and deliberate manner, and I  
3 sincerely request you to keep that attitude throughout  
4 your deliberations when you go into your jury room.  
5 Of course, you should always respect the viewpoints  
6 of your fellow jurors. You should talk to each other  
7 with consideration and with intelligence and decide  
8 this case on the merits and on the merits alone.  
9 However, each juror should reach his own conclusion,  
10 and no juror should surrender or compromise his own  
11 belief or conviction as to the innocence or guilt of  
12 this defendant.

13 The evidence consists of the testimony of the  
14 witnesses, and the exhibits which were admitted into  
15 the record, and the facts stipulated by counsel. You  
16 must not consider any evidence which the Court has  
17 instructed you to disregard.

18 You have heard the evidence and the argument of  
19 counsel and now it becomes my duty to give you the law  
20 governing this case.

21 Now, ladies and gentlemen, it is your duty and  
22 your sworn duty to accept the law as it is given to  
23 you by the Court not as any attorney gives it to you.  
24 It's not his interpretation of the law that counts,  
25 it's the Court's interpretation. Thereafter, you must

3

## Charge

determine the facts of the case for yourself, and it's a proper application of the law of the case to the facts of the case as you find those facts to be which will determine your verdict.

I wish to make it very plain to you that the sole responsibility and the sole power in determining the facts are with you, and anything that I may say, or seem to say, as indicating any view or opinion as to the facts is to be ignored by you.

In determining the facts, you should not be influenced by any rulings that the Court may have made during the trial. Those rulings dealt with matters of law and not with questions of fact.

The Court's ruling on objection made by any of the attorneys and any questions which the Court posed to any witness are not to be considered by you as indicating either the guilt or innocence of the defendant. The same is true with respect to any inflection of the Court's voice relative to any such matters, or in connection with any comments or statements the Court may have made to either of these attorneys.

Now, you may wonder why the Court asked the witnesses certain questions from time to time. The

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## Charge

reason was that some of the testimony raised questions in the Court's mind and the Court thought that those questions might have been also raised in the minds of the jury. And I know the jury can't ask questions so I attempted to clarify the testimony by some questions I asked.

Now, they must not be deemed by you as any indication of any opinion the Court may have in the case.

The Court expresses no opinion as to the guilt or innocence of the defendant. The determination of such guilt or innocence is a matter that rests exclusively with you.

There are some general principles of law which are of importance in every criminal case, and I wish, first to make some statements which apply to criminal cases in general; after which I shall endeavor to make clear to you what this particular case involves.

It is an established principle that an indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused, and does not create any presumption or permit any inference of guilt against the defendant.

It is also a principle well recognized in law

1  
2 that every person who is charged with the commission  
3 of a crime is presumed to be innocent, and the burden  
4 rests on the Government to prove to your satisfaction  
5 beyond a reasonable doubt every element of the crime  
6 and that the defendant is guilty as charged. This  
7 presumption of innocence remains with the defendant  
8 all through the case until, if ever, it is over-  
9 born by proof which satisfies you beyond any reason-  
10 able doubt that this presumption of innocence no  
11 longer remains with him.

12 Thus, you look at all the evidence introduced  
13 into this case, including the testimony of the witnesses  
14 and any exhibits that have been introduced into evidence,  
15 and ask yourselves whether or not you are satisfied  
16 beyond a reasonable doubt that the offenses have been  
17 committed as charged in the indictment. If you are  
18 so satisfied then it will be your plain duty to  
19 convict the defendant. But if there exists in your  
20 mind a reasonable doubt of the defendant's guilt, then  
21 you must give the defendant the benefit of that doubt  
22 and acquit him. If there are two reasonable conclusions  
23 equally supported by the evidence, one of which is  
24 consistent with the guilt of the defendant, and the  
25 other consistent with his innocence, then you must

1  
2 adopt that conclusion which is consistent with his  
3 innocence and acquit him.

4 The question of reasonable doubt is one which  
5 can be determined only by you. It cannot be determined  
6 by arguments or opinion of counsel.

7 In reaching a conclusion with respect to a  
8 reasonable doubt, you must consider all the evidence  
9 together, not just a particular segment or portion  
10 of the evidence isolated from the rest of the evidence.

11 And when you consider the arguments made by  
12 either counsel here, you look and see whether those  
13 arguments are supported by actual evidence that came  
14 in here, not the crime.

15 The term reasonable doubt as used in this charge  
16 does not mean just any possible doubt you might have,  
17 but it means such reasonable doubt as a careful,  
18 prudent and reasonable man or woman ought to entertain  
19 in the circumstances proved. It means as it says,  
20 a doubt based on reason and which is reasonable in view  
21 of all the evidence.

22 The key word here is "reasonable". A reasonable  
23 doubt may arise from the evidence produced or indeed  
24 from the lack of evidence in the case. It is, as I've  
25 said to you, the obligation of the Government to prove

a defendant guilty beyond a reasonable doubt, but it is not the obligation of the Government to prove a defendant guilty beyond a shadow of a doubt. It's rarely possible to prove anything to an absolute certainty or beyond a possible doubt. Seldom can one prove a controversial fact with mathematical certainty.

A reasonable doubt does not mean a vain, fanciful, vague or whimsical or imaginary doubt, nor does it mean a possible doubt created by a reluctance on the part of the jury to perform an unpleasant task. It means a doubt arising out of the evidence or lack of evidence which is a reasonable doubt.

A reasonable doubt is a doubt that would cause prudent men to hesitate to act in matters of importance to themselves.

If after a fair and impartial consideration of all of the evidence or lack of evidence you have a reasonable doubt as to the defendant's guilt, then it is your duty to acquit him. On the other hand, if after a fair and impartial consideration of all of the evidence you believe that you have no doubt that is reasonable as to the defendant's guilt, then it is your duty to convict him.

One is said to be convinced in a case of this

8

## Charge

kind beyond a reasonable doubt when, after an impartial comparison and consideration of all of the evidence, one can conscientiously say that he is convinced to a moral certainty of the truth of the charge.

Thus, you look at all the evidence introduced in this case and ask yourselves whether or not you are satisfied beyond a reasonable doubt that the offenses have been committed as charged in the indictment.

If you are so satisfied, then it will be your plain duty to convict the defendant. But if there exists in your mind a reasonable doubt of the defendant's guilt, you must give him the benefit of that doubt and acquit him.

Now, the machinery of trial calls for the exercise of varying functions by the witnesses who testified, and by the Court who presides and by you, the jury. You, as I said before, as a jury, you exercise this fact finding function.

And I say it again, that you must consider the evidence, weigh the evidence and you draw inferences from the evidence but only from the evidence.

You must distinguish between the mere arguments of counsel which have been made before you and the evidence upon which those arguments rest. The

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## Charge

1  
2 repetition of an argument, however often, and however  
3 loudly or dramatically it is made does not constitute  
4 evidence. You must carefully analyze the assertions  
5 that have been made to you by counsel for the defendant  
6 and counsel for the Government and ascertain what  
7 basis those assertions have in the evidence.

8 This brings us directly to the indictment  
9 itself, which I read to you when I first came into this  
10 room, and now that the case is practically over I will  
11 read it to you again.

12 Now, this indictment reads this way, that on or  
13 about -- Count 1. It has two counts and you must keep  
14 that in mind.

15 Count 1 reads this way:

16 "On or about the 20th day of September, 1974,  
17 within the Eastern District of New York, the defendant  
18 Eduardo Montiel did knowingly and intentionally  
19 possess with the intent to distribute approximately  
20 14 ounces of cocaine, a Schedule 2 narcotic drug  
21 controlled substance, in violation of the laws of the  
22 United States. Title 21, US Code, Section 841(a)(1)."

23 Count 2 is a conspiracy count, and it reads  
24 this way:

25 "On or about and between the 19th day of September  
1974 and the 20th day of September, 1974, both dates

being approximate and inclusive, within the Eastern District of New York, the defendant Eduardo Montiehl, together with one known as "John Doe" Alvero named herein as a co-conspirator but not as a defendant, wilfully, knowingly and unlawfully did combine, conspire, confederate and agree to commit an offense in violation of Title 21, US Code, Section 841(a)(1), in that they did conspire to distribute quantities of cocaine, a Schedule 2 narcotic drug controlled substance in violation of the laws of the United States."

Then this states in furtherance of such conspiracy and to effect the objective thereof, the defendant Eduardo Montiehl committed the following overt acts, among others, within the Eastern District of New York:

"1. On September 19th, 1974, the defendant Eduardo Montiehl met with undercover agent Angelo Carrion at 41-53 68th Street, Woodside, New York.

"2. On September 20th, 1974, the defendant Eduardo Montiehl met with undercover agent Angelo Carrion at 41-53 68th Street, Woodside, New York. Title 21 US Code, Section 846."

As I read to you there are two counts in the indictment, and you must consider each count separately

11

## Charge

and ascertain whether or not the defendant had been proven guilty beyond a reasonable doubt of the offenses charged in each count.

Let us turn first to Count 1 which simply charges the defendant having in his possession, knowingly and intentionally with intent to distribute these 14 ounces of cocaine.

Now, the section of that statute which is claimed to have been violated is Section 841(a)(1) Title 21 of the US Code, and this reads in part as follows:

"(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally -

"(1) To distribute, or dispense, or possess with intent to distribute, or dispense, a controlled substance" that's the way the statute reads.

Now, a controlled substance, however, as used in the statute is nothing more than a drug or substance mentioned in one of the schedules set forth in Section 812 of Title 21 of the US Code.

Cocaine is set forth in Schedule 2 of this section. In other words, the statute prohibits the unlawful possession with the intent to distribute cocaine, with knowledge that it is cocaine.

12

## Charge

It is also to be noted that the prohibition in the statute is not limited to the sale of cocaine but prohibits possession with intent to distribute any amount of cocaine, even though small, if possessed with intent to distribute. Consequently, one may violate the statute by knowingly and intentionally possessing with intent to distribute any amount of cocaine without receiving any money or other consideration therefore.

In other words, the statute prohibits any unlawful possession with intent to distribute cocaine in any manner, even though a sale was never made.

I hope I made that clear.

Referring to the illegal possession with intent to distribute a controlled substance, such as cocaine, as set forth in Count 1 of the indictment, Section 841(a) (1) Title 21 of the US Code provides that it shall be unlawful for any person knowingly or intentionally to possess with intent to distribute a controlled substance, such as cocaine..

The elements of the offense as charged in Count 1 of the indictment are:

(1) That the defendant possessed a narcotic controlled substance, such as cocaine, with intent to

13

## Charge

distribute, and:

(2) That he did so intentionally, wilfully and knowingly. Two elements.

The burden is upon the Government to prove, beyond a reasonable doubt, both of these elements and failure to prove either is fatal to the prosecution and entitles the defendant to a verdict of acquittal on that particular charge.

We now come to Count 2 which I read to you. Count 2 of the indictment charges the defendant Eduardo Monteill with combining and conspiring with one "John Doe" Alvero to knowingly and intentionally possess with intent to distribute a quantity of cocaine, in violation of Section 841 (a) (1) of Title 21 of the United States Code which I have read to you before. Section 846 of Title 21 of the US Code specifically provides that "Any person who attempts or conspires to commit any offense defined in this subchapter," which includes Section 841(a) (1), shall be subject to the same punishment as prescribed for the offense itself.

For two or more persons to conspire, confederate or combine together to commit or cause to be committed a breach of Section 841(a) (1) of Title 21 of the US Code is an offense of grave character which involves

2 a plotting to subvert the law. It is almost always  
3 characterized by secrecy, requiring much time for its  
4 discovery.

5 A conspiracy to commit a violation of Section 84  
6 (a) (1) is an offense distinct from the actual violation  
7 of Section 841(a) (1) itself.

8 The crime of conspiracy, as charged in this  
9 indictment, is a separate and distinct crime. The  
10 conspiracy is something apart from and independent  
11 of the offenses embraced within its unlawful object.

12 The essence of the crime in this case is the  
13 unlawful agreement among the two parties to commit  
14 an offense against the United States; in this case a  
15 violation of Section 841(a) (1) of Title 21 of the  
16 US Code, that is, to knowingly and intentionally  
17 possess with intent to distribute a quantity of cocaine.

18 Frequently the crime of conspiracy is accompanied  
19 by an overt act to effect its unlawful object.

20 The actual accomplishment of the unlawful  
21 object of the conspiracy is not essential to the  
22 crime.

23 The essential element of the crime of conspiracy  
24 to violate Section 841(a) (1) of Title 21 of the US Code,  
25 otherwise stated, is the unlawful combination of two

15

## Charge

1 or more persons, pursuant to an unlawful agreement  
2 or common understanding, to commit the offense of  
3 knowingly and intentionally possessing with intent to  
4 distribute a quantity of cocaine.  
5

6 There is no crime of conspiracy in the absence  
7 of such an agreement. Conspiracy to violate some  
8 statute must be accompanied by an overt act in  
9 furtherance of the object or purpose of the conspiracy,  
10 but to prove a conspiracy to violate this particular  
11 statute it is not necessary to prove an overt act,  
12 although the Government offered evidence of such an  
13 overt act or acts.

14 There is no requirement that the agreement be  
15 a formal agreement in which the unlawful objects of  
16 the conspiracy are explicitly stated. Such a require-  
17 ment would render proof of the agreement most difficult,  
18 if not impossible. It is sufficient that the minds of  
19 the parties meet understandingly on their common  
20 purpose to commit the offense. The mutual understanding  
21 or agreement is usually, if not always, an implied  
22 agreement; that is, a mere common understanding among  
23 the parties to accomplish by their concerted action,  
24 the unlawful object of the conspiracy. Such an agree-  
25 ment or mutual understanding is generally a matter of

16

## Charge

inference deduced from the acts of persons accused and circumstances under which those acts were performed in pursuance of their apparent criminal purpose.

To find the existence of a conspiracy, you must first determine from all the evidence in the case, relating to the period of time embraced in the indictment, whether or not a conspiracy, as I have defined that term, existed. If you decide that a conspiracy did exist you must secondly determine whether or not this defendant became a member of the conspiracy.

In determining whether or not a person became a member of a conspiracy, you must do so by independent evidence as to that particular person's own conduct, that is, from the testimony of what that particular person said or did, and in doing so, you do not consider evidence which refers to someone other than that particular person.

In other words, you determine the membership of that particular person in the conspiracy from the testimony of a witness or witnesses concerning that particular person's own actions, conduct and statements, if any.

A conspiracy may be inferred by the conduct of a particular person's acts under the circumstances

17

## Charge

and in the context of which those acts were performed, but they must show that that particular person acted jointly with another or others and knowingly participated in an unlawful scheme or plan with the intent to further the object or purpose of the conspiracy, and such conduct and circumstances must establish the conspiracy of each person or defendant beyond a reasonable doubt.

The guilt of a defendant, once he is proven to be a member of the conspiracy, may be established by the acts of his fellow conspirators during and in furtherance of the conspiracy, without proof that defendant did every act constituting the offense.

I must tell you in that connection, the mere association or acquaintance of one defendant with others or with another person without more does not establish the existence of a conspiracy.

However, one may be guilty of a conspiracy to commit a crime even though he did not himself participate in the actual commission of the crime itself, if he conspired with others to commit it. As I said before, one can be guilty of agreeing or conspiring to commit a crime even though the crime was never committed.

18

## Charge

There is upon the Government the burden to prove, beyond a reasonable doubt that the defendant was a party to the conspiracy mentioned in the indictment, and that the object of the conspiracy was to commit a crime which in this case was knowingly possessing cocaine with the intent to distribute the same.

To find the defendant guilty of conspiracy, you must find that he participated in the conspiracy itself.

(Continued on next page)

Now you have heard me mention the word intention-  
ally and knowingly.

Now, the crimes charged in this indictment  
require a knowledge of and an intent to commit the  
crimes charged.

It is obviously impossible to ascertain or  
prove directly what a man knew or intended. You  
cannot look into a person's mind and see what his  
intentions were or what he knew. But a careful  
and intelligent consideration of the facts and  
circumstances shown by the evidence in any given case  
as to a person's actions and statements enables us to  
infer with a reasonable degree of certainty and  
accuracy what his intentions were in doing or not  
doing certain things and the state of his knowledge.

Of course, we cannot -- talking about knowledge --  
we cannot physically look into one's mind and  
ascertain what knowledge or intent he had. "Knowledge,"  
as well as "intent," is descriptive of a state of  
mind, and, as an element of the offense, it is  
seldom, if ever, susceptible of direct proof.

The proof of this element of knowledge and  
intent may rest, as it frequently does, on evidence  
of facts and circumstances from which it clearly

## Charge

1  
2 appears as the only reasonable and logical inference  
3 that the defendant conspired to knowingly and  
4 intentionally possess with intent to distribute a  
5 quantity of cocaine. No person can intentionally  
6 avoid knowledge by closing his eyes to the facts that  
7 would lead a reasonable man to investigate. However,  
8 a mere suspicion that something is wrong or improper  
9 is not equivalent to knowledge or intent.

10 On the other hand, knowledge and intent may be  
11 inferred from the acts of the party and is a question  
12 of fact to be determined from all the circumstances,  
13 and the jury may scrutinize the defendant's entire  
14 conduct at the time the offenses alleged were committed.

15 The circumstantial evidence sufficient to  
16 support a charge of a conspiracy to knowingly and  
17 intentionally possess with intent to distribute  
18 cocaine, must be sufficiently persuasive however, as  
19 to exclude the inference of innocence under the  
20 circumstances.

21 Now, if you find that the defendant did not --  
22 this is not exactly applicable in this case, but if  
23 you do find that the defendant did not learn what  
24 the substance was, but that the only reason he did  
25 not learn what the substance was, but that the only

1  
2 reason he did not learn it was because he deliberately  
3 chose not to learn for the very purpose of being able  
4 to assert his ignorance if he was discovered with the  
5 substance in his possession, then you may find that  
6 he had the full equivalent of knowledge because his  
7 self-imposed ignorance cannot protect him from  
8 criminal responsibility.

9 If however, you find that the defendant  
10 believed that what was in the suitcase was not cocaine  
11 or any other narcotic drug, then you must acquit  
12 the defendant on both counts.

13 Possession may be actual physical possession  
14 of the narcotic drug or may be constructive possession.  
15 A person who knowingly has direct physical control  
16 over a narcotic drug at a given time, is then in  
17 actual possession of that drug.

18 Constructive possession means that although  
19 a defendant did not actually physical possession of  
20 the narcotic drug, his or her relationship with the  
21 narcotic drug is such that he or she had ~~possession~~  
22 and control over the narcotic drug. Under such  
23 circumstances, it is said that a person ~~has~~  
24 constructive possession of the narcotic ~~drug~~.

25 The law recognizes also that possession may be

1  
2 sole or joint. If one person alone has actual or  
3 constructive possession of a thing or narcotic drug,  
4 possession is sole. If two or more persons share  
5 actual or constructive possession of a thing or  
6 narcotic drug, their possession is joint.

7 If you find from the evidence beyond a reason-  
8 able doubt that this defendant either loaned or  
9 jointly with another had actual or constructive  
10 possession of the narcotic drug described in the  
11 indictment, then you may find that he had possession  
12 of that drug within the meaning of the word "possession"  
13 as used in these instructions.

14 For your assistance, I shall now try to briefly  
15 outline the contentions of the Government and the  
16 defendant as indicated by the evidence.

17 Now, I will not attempt to summarize any  
18 evidence or to refer to every witness, I am simply  
19 giving you roughly what the Government contends. You  
20 will decide whether they have proven beyond a reason-  
21 able doubt their contentions.

22 After looking over my notes, I find that the  
23 Government contends that on September 19th, 1974,  
24 at 11:30 p.m., Detective Carrion together with an  
25 informant named Flip, met the defendant at the latter's

23

## Charge

home at 41-53 68th Street, Woodside, New York, and that Detective Carrion gave the defendant his phone number and asked the defendant to call him the following day, that is September 20th, with respect to the potential purchase of 14 ounces of cocaine; that the defendant called Carrion at 12:30 a.m. the next day, that is September 20th, and that the telephone conversation was recorded; that following the phone call Detective Carrion with Detective Heyward reached the defendant's apartment at approximately 3:45 p.m.; that thereafter Carrion again entered the defendant's apartment and met with one Alvero with the defendant and there he saw 14 ounces of a white powder substance, which he subsequently tested and concluded from his test that it was cocaine; that he weighed the cocaine on the scale and found that instead of it being 16 ounces of cocaine as originally understood, there was only 14 ounces of cocaine, and that after arguing unsuccessfully with both Alvero and the defendant to reduce the price from \$13,000 to \$12,500, he left the apartment and informed Heyward who was in the Government car across the street, whereupon both Heyward and Carrion, who were also joined by Detectives Manthe and Grunnion,

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2 knocked and kicked on the door of defendant's apart-  
3 ment which was finally opened by the defendant himself.  
4 I have ruled in this case that as a matter of law that  
5 under the circumstances a warrant to enter that  
6 apartment was unnecessary.

7 Both Heyward and Carrion testified that before  
8 the door was opened they heard what they thought was  
9 the flushing of the toilet; that Grunnion and Manthe  
10 arrested the defendant, and Heyward and Carrion searched  
11 the apartment, that there was found in the apartment  
12 a tinfoil which had traces of cocaine upon it, and  
13 also scales; that in addition, one of the detectives  
14 with part of a matchbook scraped a small quantity of  
15 the substance from the toilet bowl which later was  
16 analyzed as cocaine; and that there were approximately  
17 eight or nine detectives who were at one time or  
18 another in the defendant's apartment pursuant to a  
19 prior signal given by Heyward.

20 Now, ladies and gentlemen, this is simply a  
21 rough outline of what the Government claims and what  
22 the Government contentions are. To this, of course,  
23 the defendant by his plea of not guilty enters a plea  
24 of complete denial to the whole charge and all of the  
25 contentions. Now, there is no intention at this time

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## Charge

1 or any other time in fact during this charge to  
2 repeat to you all the testimony. It's going to be  
3 your recollection of the testimony which will govern  
4 your deliberations, and my effort to outline to you  
5 the intentions of the Government is, I repeat not an  
6 indication of any opinion of mine, nor if you find  
7 I have made an error in outlining this contention  
8 then you must disregard my statements completely.  
9

10 And if the attorneys, either of them, have  
11 misstated the testimony, you must disregard that  
12 misstatement.

13 Again, I advise you that it will be your  
14 recollection of the testimony that will control in  
15 your deliberations.

16 The defendant did not take the stand. The law  
17 does not compel a defendant to take the witness stand  
18 and testify; and no presumption of guilt may be raised,  
19 and no inference of any kind may be drawn from the  
20 failure of the defendant to testify, nor should this  
21 fact enter into your discussions or deliberations in  
22 any manner whatsoever when you enter the jury room.

23 Just a word or two about the person referred  
24 to as Flip. Now, the law does not require the  
25 prosecution to call as witnesses all persons who may

1  
2 have been present at anytime or place involved in  
3 the case, or who may appear to have some knowledge of  
4 the matters in issue at this trial. No negative  
5 inference should be drawn from either side the failure  
6 to call the witnesses whose testimony would be  
7 merely cumulative or not pertinent to the issues in  
8 the case before you.

9 Both sides have subpoena power and could have  
10 required a particular witness to testify at this  
11 trial, if he was available for service of the subpoena.

12 A word now about circumstantial evidence.  
13 The Government's case against the defendant rests  
14 on both direct and circumstantial evidence. As to  
15 the subject of circumstantial evidence. Circumstantial  
16 evidence is evidence of a fact from which you may  
17 reasonably infer the existence or non-existence of  
18 another fact.

19 For example, I will give you an illustration  
20 which I've given to jurors in the past.

21 For example, if a person comes into your home  
22 wearing a raincoat which is wet, carrying an  
23 umbrella which is wet, that would be circumstantial  
24 proof that it is raining outside even though you  
25 did not otherwise know it was raining. Or, to

1  
2 give you another illustration perhaps a little closer  
3 to home here in the courtroom, suppose a member of the  
4 jury were to ask one of the Court Clerks for a pad  
5 and a pencil to make notes, and suppose that after you  
6 took your recess you came back and another Court  
7 Clerk, not the clerk to whom the member of the jury  
8 first spoke, were to hand the juror a pad of paper  
9 and pencil, that would be circumstantial evidence  
10 that the first Court Clerk had given the jurors  
11 message to the second court clerk.

12           As the words indicate, circumstantial evidence  
13 means evidence involving circumstances surrounding  
14 the incident and details as the distinguished from  
15 direct personal observation. It is more than, and  
16 fundamentally different from, mere conjecture or  
17 surmise; for under our law no man is to be convicted  
18 on the basis of guesswork, suspicion or speculation.  
19 An inference that is reasonably drawn from the facts  
20 testified to is evidence. In analyzing the evidence  
21 you may draw reasonable inferences based upon your  
22 own common sense and general experience from any  
23 facts that you find were proved. While an inference  
24 may be reasonably drawn from a proven fact, it may  
25 not be drawn from another inference. When two

1 inferences may be drawn from a proven fact, one  
2 consistent with guilt and one consistent with  
3 innocence, you must draw the inference of innocence.  
4 A logical inference is to be distinguished from  
5 sheer speculation or mere suspicion.  
6

7 Circumstantial evidence is legal and acceptable  
8 evidence. It is that evidence which tends to prove a  
9 disputed fact by proof of other facts which have a  
10 legitimate tendency to lead the mind to a conclusion  
11 that the facts exist which is thought to be established.  
12

13 Curcumstantial evidence may consist of an  
14 accumulation of many details which are logically  
15 interrelated and so consistent with each other, and  
16 so inherently probable, that you may not have the  
17 slightest doubt as to its truthfulness and accuracy.

18 As a general rule, the law makes no distinction  
19 between direct and circumstantial evidence.

20 Circumstantial evidence may be enough to convict  
21 but the circumstantial evidence must be so convincing  
22 that it leaves you with no reasonable doubt. If you  
23 have a reasonable doubt after you consider all the  
24 circumstantial and other evidence as to this defendant,  
25 you must acquit him.

We come now to a very important subject, and

1  
2 that's the credibility of the witnesses.

3  
4 In considering the evidence you exercise the  
5 exclusive function of passing upon the credibility  
6 of the witnesses. Now, you can see that this is a  
7 very important function, because to determine where  
8 the truth lies you must of necessity decide who is  
9 telling the truth. How you are to do this is left  
10 to your own determination. Among other things, in  
11 determining the credibility of a witness, the jury  
12 may consider his or her motive in testifying, his or  
13 her manner and demeanor on the witness stand, his or  
14 her interests, prejudice or bias, if any, whether he  
15 or she has a purpose or interest to serve which might  
16 color his or her testimony.

17 Interest does not necessarily mean that a witness  
18 is untruthful. It is merely an element that you may  
19 consider, in reaching your determination, upon the  
20 question of whether he's telling the truth. You  
21 consider the witness' demeanor; using a colloquial  
22 expression, you size him up when he tells you anything,  
23 and you decide whether he strikes you as a fair and  
24 candid witness, or whether he strikes you as a person  
25 who is not telling the truth either intentionally or  
unintentionally.

1  
2 You also consider the inherent probability  
3 or improbability of a witness' testimony, as of course  
4 you should consider the inconsistency or discrepancies  
5 in the testimony of a witness, or between the testimony  
6 of different witnesses. Such inconsistencies or  
7 discrepancies may or may not cause you to discredit  
8 a witness' testimony.

9 Another consideration is whether or not the  
10 witness has been contradicted by other credible  
11 evidence and whether or not he or she has made state-  
12 ments at other times and places, under oath or  
13 otherwise, which contradicted or are contrary to those  
14 made by him on the witness stand. You decide what  
15 is important and what is not important regardless  
16 of any statements by counsel.

17 The jury is not bound to believe inherently  
18 improbable or unreasonable statements made by any  
19 witness just because the witness who made them was  
20 under oath.

21 The jury has a right in appraising a particular  
22 witness' credibility, as to all or part of his or her  
23 testimony, to consider the probability or improbability  
24 of that testimony when viewed in the light of all of  
25 the circumstances and other evidence in the case.

## Charge

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2 If you find that any witness has knowingly  
3 testified falsely to an indisputable fact, you may  
4 disregard the entire testimony of that witness; or  
5 you may accept that which you believe to be true  
6 and disregard the balance. If you disregard his or  
7 her testimony altogether, and the guilt of any  
8 defendant is dependent on such testimony, then you  
9 must acquit that defendant.

10 It is going to be for you to determine whether  
11 a witness, whether he may be, is telling the truth  
12 as to all the facts or only with respect to some of  
13 the facts or whether he is telling the truth at all.  
14 The test as to whether you believe a witness is the  
15 same test which you apply in your everyday business  
16 or in your home affairs, where you are called upon  
17 to make a similar determination. Do not think,  
18 members of the jury, that when you came into this  
19 jury box and were sworn as jurors that it was supposed  
20 that you would lay aside your business or everyday  
21 experience. That is not so. You are now being called  
22 upon, indeed, to use that business or everyday  
23 experience to assist you in determining any conflict  
24 in evidence in this case. You are the exclusive  
25 judges in determining where the truth lies.

1  
2 In this case someone is not telling the truth  
3 and it is for you to determine who it is telling the  
4 truth.

5 You have been chosen and sworn as jurors in  
6 this case to try the issues of fact presented by the  
7 allegations of the indictment and the denial made by  
8 the "not guilty" plea of the defendant accused.  
9 Let your verdict be without prejudice, bias or sympathy.  
10 You are a fact finding body and it is your duty to  
11 decide whether the acts charged in the indictment have  
12 been committed beyond a reasonable doubt.

13 You are to perform this duty without fear and  
14 without bias or prejudice as to any party. The law  
15 does not permit jurors to be governed by fear,  
16 sympathy, prejudice or public opinion. In arriving  
17 at your decision you should consider the evidence  
18 in the light of your experience. As I said before,  
19 by the exercise of your oath and by your common sense,  
20 you must not go beyond the evidence and the inferences  
21 to be drawn from the evidence. It's not a case where  
22 you can use your own imagination which is not supported  
23 by any evidence at all, and you must take the law  
24 as I've given it to you, not as you would like to see  
25 the law to be if you disagree.

32a

## Charge

Now, the accused and the public expect that you will carefully and impartially consider all the evidence, follow the law as stated by the Court and reach a just verdict, regardless of the consequences.

(Continued on next page)

Charge of the Court

179

1  
2 That's your duty, and it's your recollection of  
3 the evidence that will count in this case.  
4

5 You must understand that the Court does not  
6 express, and has not expressed directly or indirectly,  
7 subtly or otherwise, by intonation or gesture, any  
8 opinion concerning any of the facts that are involved  
9 in this case.

10 If the attorneys, or either of them, have mis-  
11 stated the testimony, disregard such misstatements.

12 Again I advise you that it will be your recollec-  
13 tion of the testimony that will control in your deliber-  
14 ations, and not the arguments of the counsel.

15 I will just repeat, in conclusion. It's your  
16 duty to weigh the evidence carefully, dispassionately,  
17 calmly, and to reach a conclusion about the case, as  
18 to the facts which are wholly within your finding.

19 The only question for your consideration is  
20 whether the defendant is guilty or innocent of the  
21 offense for which he is on trial. If you are satisfied  
22 beyond a reasonable doubt that he is guilty, it is your  
23 plain duty to convict him. If you have a reasonable  
24 doubt about the matter, it is equally your duty to  
25 acquit him.

Now, the punishment provided by law is a matter

1  
2 exclusively within the province of the Court. You can-  
3 not and you should not allow consideration of any  
4 punishment which may be imposed on the defendant if  
5 he is found guilty to influence you in arriving at an  
6 impartial verdict as to the guilt or innocence of the  
7 defendant. It is for the Court to determine any miti-  
8 gating or any other special circumstances which may  
9 require consideration in the case, if the defendant  
10 is found guilty, so you should not be concerned with  
11 the question of punishment.

12 Now, Ladies and Gentlemen, all twelve of you  
13 must agree, which ever way you find. In other words,  
14 your verdict must be unanimous. You must take each  
15 Count of the Indictment separately, and you must deter-  
16 mine the guilt or innocence of the defendant with re-  
17 spect to each Count.

18 The form of your verdict should be

19 "We, the jury, find the defendant Eduardo  
20 Montiell Not Guilty on Count One," or

21 "We, the jury, find the defendant Eduardo  
22 Montiell Guilty on Count One," and so you repeat that  
23 same form with respect to Count Two.

24 If you wish any testimony of any witness to be  
25 read to you, or if you have any further questions,

3 1  
2 please send a note to the Marshal, who will relay your  
3 request to me.

4 Of course, jury service is not always pleasant,  
5 and it is rarely convenient. Jury service is one of  
6 the keystones of our system of American justice, and  
7 democratic government. I want to thank each and every  
8 one of you for your outstanding devotion as citizens  
9 to your important work as jurors.

10 May you, acting in accordance with the evidence  
11 and the law, by your verdict, declare the truth and  
12 proclaim the cause of righteousness and justice.

13 If you desire to examine any of the Exhibits,  
14 they will be delivered to you upon request, and if after  
15 you have retired, you desire to be informed on a point  
16 of law arising in the case, or to have any part of the  
17 testimony clarified, you should ask to be returned to  
18 the court for further instructions.

19 At this point we will take a five minute recess  
20 in order that I may hear applications to be made by  
21 counsel. I request you not to consider this case until  
22 you are brought back at the end of this short recess.

23 At the same time, I'll take this opportunity to  
24 discharge the Alternates. I want to thank them for act-  
25 ing as an insurance policy. Thank you very much. We

1 will take a five minute recess.

2 (Whereupon, the jurors were excused.)

3 THE COURT: Any application, Mr. Cutler?

4 MR. CUTLER: I have no application.

5 THE COURT: Well, you are tearing that paper up  
6 right and left.

7 Do you have any application?

8 MR. GOULD: I have no application.

9 THE COURT: Bring in the jury.

10 (Whereupon, jurors returned to the courtroom,  
11 and are now seated in the jury box.)

12 THE COURT: Well, Ladies and Gentlemen, there  
13 are no further instructions that I have to give you,  
14 you may proceed to deliberate. I hope your lunch is  
15 there. I'll be here every minute of the day, so you  
16 can call upon me if you want any further clarification,  
17 or any other instruction.

18 Swear in the Marshals.

19 (Whereupon, two Marshals were Sworn in open court  
20 by the Clerk of the Court.)

21 THE COURT: All right, thank you very much.

22 THE CLERK: We have permission to send in any  
23 Exhibits if they ask for any?

24 MR. GOULD: Yes.

25 MR. CUTLER: Yes.

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THE COURT: Be back at 2:00 o'clock.

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(Whereupon, the court stood in luncheon recess.)

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